5–10–95
Vol. 60 No. 90
Pages 24761–25118

# federal register

Wednesday
May 10, 1995

**Briefings on How To Use the Federal Register**
For information on briefings in Washington, DC and Boston, MA see announcement on the inside cover of this issue.

**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to swais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial-in users should use communications software and modem to call (202) 512–1661 and login as swais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access.* For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $494, or $544 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $433. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 60 FR 12345.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **512–1806** |

**Online:**

Telnet swais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as swais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

| | |
|---|---|
| Assistance with online subscriptions | **202–512–1530** |

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | **512–1800** |
| Assistance with public single copies | **512–1803** |

**FEDERAL AGENCIES**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **523–5243** |
| Assistance with Federal agency subscriptions | **523–5243** |

**For other telephone numbers, see the Reader Aids section at the end of this issue.**

## THE FEDERAL REGISTER

## WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

### WASHINGTON, DC

**WHEN:** 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

### BOSTON, MA

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

**WHERE:** Room 419, Barnes Federal Building 495 Summer Street, Boston, MA

**RESERVATIONS:** Call the Federal Information Center 1–800–347–1997

Printed on recycled paper containing 100% post consumer waste

# Contents

**Federal Register**

Vol. 60, No. 90

Wednesday, May 10, 1995

**Agency for Health Care Policy and Research**
NOTICES
Meetings; advisory committees:
June, 24866–24867

**Agency for International Development**
NOTICES
Agency information collection activities under OMB review, 24879–24880

**Agricultural Marketing Service**
PROPOSED RULES
Milk marketing orders:
Georgia et al., 25014–25071

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Forest Service
NOTICES
Rural empowerment zones and enterprise communities designation, 24828–24829

**Army Department**
*See* Engineers Corps
NOTICES
Meetings:
Science Board, 24843
U.S. Military Academy, Board of Visitors, 24843
Military traffic management:
DOD personal property program; contracting services for improvement, 24843–24844

**Coast Guard**
RULES
International Convention for Safety of Life at Sea (SOLAS 74); amendments, 24767–24782
Merchant marine officers and seamen:
Foreign trade vessels; Federal pilotage requirement, 24793–24797

**Commerce Department**
*See* Foreign-Trade Zones Board
*See* International Trade Administration
*See* Minority Business Development Agency
*See* National Oceanic and Atmospheric Administration

**Commission on Protecting and Reducing Government Secrecy**
NOTICES
Meetings, 24843

**Defense Department**
*See* Army Department
*See* Engineers Corps

**Education Department**
NOTICES
Grants and cooperative agreements; availability, etc.:
Dwight D. Eisenhower professional development Federal activities program; correction, 24968

**Energy Department**
*See* Federal Energy Regulatory Commission

**Engineers Corps**
NOTICES
Environmental statements; availability, etc.:
Los Angeles County, CA; drainage area water conservation and supply study, 24844–24845

**Environmental Protection Agency**
RULES
Air programs:
Stratospheric ozone protection—
Production and consumption of various ozone-depleting substances; phaseout requirements, 24970–25009
Hazardous waste program authorization:
Georgia, 24790–24792
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Diflubenzuron, 24785–24788
Imidacloprid, 24782–24784
Prosulfuron, 24788–24790
Thiodicarb, 24784–24785
PROPOSED RULES
Air programs:
Stratospheric ozone protection—
Production and consumption of various ozone-depleting substances; phaseout requirements; transhipment provision, 25010–25012
Air quality implementation plans; approval and promulgation; various States:
Kentucky, 24813–24815
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Tralomethrin, 24815–24817
NOTICES
Clean Air Act:
Acid rain provisions—
State permits, 24849–24851
Confidential business information and data transfer; correction, 24851
Pesticide programs:
State pesticide residue removal compliance, 24855
Pesticide registration, cancellation, etc.:
Sevin Brand 50% Dust Base Carbaryl Insecticide et al., 24853–24855
Pesticides; experimental use permits, etc.:
Calgene Inc., 24851–24852
Pesticides; temporary tolerances:
Miles Inc., 24852–24853
Triclopyr, 24855–24856
Supplemental environmental projects use in EPA settlements; policy, 24856–24862
Toxic and hazardous substances control:
Premanufacture exemption approvals, 24862–24863

**Equal Employment Opportunity Commission**
NOTICES
Meetings; Sunshine Act, 24967

**Export-Import Bank**
NOTICES
Agency information collection activities under OMB review, 24863–24864

**Farm Credit Administration**
NOTICES
Meetings; Sunshine Act, 24967

**Federal Aviation Administration**
RULES
Air carrier certification and operations:
Omnibus Transportation Employee Testing Act of 1991—
Preemployment alcohol testing requirement suspension, 24765–24766
Airworthiness directives:
AlliedSignal Inc., 24762–24765
NOTICES
Meetings:
Capacity Council Industry Outreach, 24963
Civil Tiltrotor Development Advisory Committee, 24963
Passenger facility charges; applications, etc.:
Bangor, ME, et al., 24964–24965

**Federal Communications Commission**
PROPOSED RULES
Common carrier services:
U.S.-licensed geostationary-fixed satellites; transborder and separate international satellite systems policies distinction eliminated, 24817–24820

**Federal Deposit Insurance Corporation**
RULES
Practice and procedure:
Ex parte communications; uniform rules, 24761–24762

**Federal Emergency Management Agency**
NOTICES
Agency information collection activities under OMB review, 24864–24865

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
Northern American Energy Services Co. et al., 24845–24846
*Applications, hearings, determinations, etc.:*
Algonquin Gas Transmission Co., 24847
Algonquin LNG, Inc., 24846–24847
ANR Pipeline Co., 24847
CNG Transmission Corp., 24848
Koch Gateway Pipeline Co., 24848
Paiute Pipeline Co., 24848
Tennessee Gas Pipeline Co., 24848–24849
Texas Gas Transmission Corp., 24849
Transwestern Pipeline Co., 24849

**Federal Highway Administration**
RULES
Motor carrier safety standards:
Omnibus Transportation Employee Testing Act of 1991—
Preemployment alcohol testing requirement suspension, 24765–24766
PROPOSED RULES
Motor carrier safety standards:
Driver qualifications—
Commercial driver's license; pyrotechnics industry waiver (fireworks transportation), 24820–24822

**Federal Maritime Commission**
NOTICES
Agreements filed, etc., 24865

**Federal Railroad Administration**
RULES
Alcohol and drug use control:
Omnibus Transportation Employee Testing Act of 1991—
Preemployment alcohol testing requirement suspension, 24765–24766

**Federal Reserve System**
NOTICES
*Applications, hearings, determinations, etc.:*
AMCORE Financial Inc., 24865–24866
Mason-Dixon Bancshares, Inc., et al., 24866

**Federal Trade Commission**
PROPOSED RULES
Trade regulation rules:
Credit practices; Regulatory Flexibility Act review, 24805–24808

**Federal Transit Administration**
RULES
Alcohol misuse prevention in transit operations:
Omnibus Transportation Employee Testing Act of 1991—
Preemployment alcohol testing requirement suspension, 24765–24766

**Fish and Wildlife Service**
NOTICES
Environmental statements; availability, etc.:
Georgetown, Horry, and Marion Counties, SC; national wildlife refuge, 24873–24874

**Food and Drug Administration**
RULES
Organization, functions, and authority delegations:
Commissioner, 24766–24767
PROPOSED RULES
GRAS or prior-sanctioned ingredients:
Propylene glycol; exclusion from cat food, 24808–24811

**Foreign-Trade Zones Board**
NOTICES
*Applications, hearings, determinations, etc.:*
California
Calbiochem-Novabiochem Corp; life science chemicals processing/distribution facility, 24830–24831

**Forest Service**
NOTICES
Environmental statements; availability, etc.:
Idaho Panhandle National Forests, ID, 24829–24830

**Health and Human Services Department**
*See* Agency for Health Care Policy and Research
*See* Food and Drug Administration
*See* National Institutes of Health

**Housing and Urban Development Department**
NOTICES
Grant and cooperative agreement awards:
Public and Indian housing—
Public housing authorities and public housing police departments; technical assistance, 24873
Grants and cooperative agreements; availability, etc.:
Congregate housing services program, 25092–25105

**Interior Department**
*See* Fish and Wildlife Service

*See* Land Management Bureau
*See* National Park Service

**Internal Revenue Service**
PROPOSED RULES
Procedure and administration:
Retail food stores and wholesale food concerns employer identification number sharing, 24811–24813
Unincorporated business organizations classification as partnerships or associations; hearing, 24813

**International Development Cooperation Agency**
*See* Agency for International Development

**International Trade Administration**
NOTICES
Antidumping:
Gray portland cement and clinker from—
Japan, 24832–24833
Antidumping and countervailing duties:
Administrative review requests, 24831–24832
Countervailing duties:
Hot-rolled lead and bismuth carbon steel products from—
United Kingdom, 24833–24838
*Applications, hearings, determinations, etc.:*
University of—
Rhode Island et al., 24838

**International Trade Commission**
NOTICES
Import investigations:
Administrative protective orders—
Breaches investigation summary, 24880–24884
GATT Uruguay Round Agreements and U.S. trade and development policy; U.S.-Africa trade flows and effects, 24884–24885
Low-power computer hard disk drive systems and products containing same, 24885–24886

**Justice Department**
*See* Juvenile Justice and Delinquency Prevention Office
*See* Victims of Crime Office

**Juvenile Justice and Delinquency Prevention Office**
NOTICES
Grants and cooperative agreements; availability, etc.:
Challenge grants program; guideline, 24886–24888

**Labor Department**
*See* Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 24896–24897
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Women in apprenticeship and nontraditional occupations; demonstration program, 25108–25117
Privacy Act:
Systems of records, 24897–24899

**Land Management Bureau**
RULES
Public land orders:
Utah, 24792–24793
NOTICES
Alaska Native claims selection:
Shaktoolik Native Corp., 24874
Management framework plans, etc.:
Lake Abert area, OR, 24874
New Mexico, 24875
Recreation management restrictions, etc.:
Roswell District, NM; visitor restrictions, 24875–24878
Survey plat filings:
Idaho, 24878

**Minority Business Development Agency**
NOTICES
Business development center program applications:
Charleston, SC, et al., 24838–24840

**National Highway Traffic Safety Administration**
RULES
Motor vehicle safety standards:
Child restraint systems—
Belt positioning child seats, labeling requirements, 24797–24800
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 24965–24966

**National Institutes of Health**
NOTICES
Inventions, Government-owned; availability for licensing, 24867–24870
Meetings:
National Heart, Lung, and Blood Institute, 24871
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 24871
National Institute of Mental Health, 24871–24872
National Institute on Alcohol Abuse and Alcoholism, 24870–24871
Patent licenses; non-exclusive, exclusive, or partially exclusive:
OncoImmunin, Inc., 24872
Pro-Virus, Inc., 24872–24873

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Gulf of Alaska and Bering Sea and Aleutian Islands groundfish, 24800–24802
Gulf of Alaska groundfish, 24800
PROPOSED RULES
Fishery conservation and management:
Alaska scallop, 24822–24827
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Lockheed Environmental Systems & Technology Co., 24840–24843

**National Park Service**
NOTICES
National Register of Historic Places:
Pending nominations, 24878–24879

**Nuclear Regulatory Commission**
PROPOSED RULES
Plants and materials; physical protection:
Security requirements changes; containment access control, 24803–24805
NOTICES
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 24904–24934
*Applications, hearings, determinations, etc.:*
Georgia Institute of Technology, 24934
United States Enrichment Corp., 24934–24935

**Pension and Welfare Benefits Administration**
NOTICES
Employee benefit plans; prohibited transaction exemptions:
T.J. Lambrecht Construction, Inc., et al., 24899–24904

**Public Health Service**
*See* Agency for Health Care Policy and Research
*See* Food and Drug Administration
*See* National Institutes of Health

**Railroad Retirement Board**
NOTICES
Agency information collection activities under OMB review, 24935

**Securities and Exchange Commission**
RULES
Accounting bulletins, staff:
Early extinguishment of debt; gain or loss recognition Correction, 24968
NOTICES
Agency information collection activities under OMB review, 24947
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 24935–24936
Chicago Board Options Exchange, Inc., 24936–24937
Chicago Stock Exchange, Inc., 24947–24948
Cincinnati Stock Exchange, Inc., 24937–24938
Midwest Securities Trust Co., 24938–24940
Municipal Securities Rulemaking Board, 24948–24951
New York Stock Exchange, Inc., 24942–24943
Philadelphia Depository Trust Co., 24951–24952
Philadelphia Stock Exchange, Inc., 24940–24947
*Applications, hearings, determinations, etc.:*
Bayerische Vereinsbank Aktiengesellschaft et al., 24952–24953
Companion Life Insurance Co. et al., 24953–24955
Janus Investment Fund et al., 24955–24957
Mutual Life Insurance Co. of New York et al., 24957–24961

**Sentencing Commission, United States**
*See* United States Sentencing Commission

**Social Security Administration**
NOTICES
Meetings:
Social Security Advisory Council, 24961

**State Department**
NOTICES
Meetings:
International Telecommunications Advisory Committee, 24962
Shrimp trawl fishing; turtle protection guidelines; certifications, 24962

**Transportation Department**
*See* Coast Guard
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Federal Railroad Administration
*See* Federal Transit Administration
*See* National Highway Traffic Safety Administration

**Treasury Department**
*See* Internal Revenue Service

**United States Sentencing Commission**
NOTICES
Sentencing guidelines and policy statements for Federal courts, 25074–25090

**Victims of Crime Office**
NOTICES
Grants and cooperative agreements; availability, etc.:
Victims of Crime Act victim assistance program; guidelines, 24888–24896

---

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 24970–25012

**Part III**
Department of Agriculture, Agricultural Marketing Service, 25014–25071

**Part IV**
U.S. Sentencing Commission, 25074–25090

**Part V**
Department of Housing and Urban Development, 25092–25105

**Part VI**
Department of Labor, 25108–25117

---

**Reader Aids**
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

---

**Electronic Bulletin Board**
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**7 CFR**

**Proposed Rules:**

1007 ..... 25014

**10 CFR**

**Proposed Rules:**

73 ..... 24803

**12 CFR**

308 ..... 24761

**14 CFR**

39 ..... 24762
121 ..... 24765

**16 CFR**

**Proposed Rules:**

444 ..... 24805

**17 CFR**

211 ..... 24968

**21 CFR**

5 ..... 24766

**Proposed Rules:**

500 ..... 24808
582 ..... 24808
589 ..... 24808

**26 CFR**

**Proposed Rules:**

301 (2 documents) ..... 24811, 24813

**33 CFR**

164 ..... 24767

**40 CFR**

82 ..... 24970
180 (4 documents) ..... 24782, 24784, 24785, 24788
271 ..... 24790

**Proposed Rules:**

52 ..... 24813
82 ..... 25010
185 ..... 24815
186 ..... 24815

**43 CFR**

**Public Land Orders:**

7141 ..... 24792

**46 CFR**

15 ..... 24763
50 ..... 24767
52 ..... 24767
56 ..... 24767
58 ..... 24767
61 ..... 24767
111 ..... 24767

**47 CFR**

**Proposed Rules:**

25 ..... 24817

**49 CFR**

219 ..... 24765
382 ..... 24765
571 ..... 24797
654 ..... 24765

**Proposed Rules:**

383 ..... 24820

**50 CFR**

672 (2 documents) ..... 24800
675 ..... 24800

**Proposed Rules:**

673 ..... 24822

# Rules and Regulations

Federal Register
Vol. 60, No. 90
Wednesday, May 10, 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.

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

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 308

**RIN 3064–AB52**

### Uniform Rules of Practice and Procedure

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** The FDIC is amending a provision of the Uniform Rules of Practice and Procedure (Rules) adopted by the Board of Directors. The final rule is intended to clarify that the Rules' provisions relating to ex parte communications conform to the requirements of the Administrative Procedure Act (APA). The Board of Governors of the Federal Reserve System (FRB) has adopted such an amendment, the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) have proposed similar amendments. In particular, the amendment would clarify that the ex parte provisions do not apply to intra-agency communications, which are governed by a separate provision of the APA.

**EFFECTIVE DATE:** June 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Andrea Winkler (202/898–3764) or Grovetta Gardineer (202/898–3905), Counsel, Legal Division, Compliance and Enforcement Section.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In August 1991, the FDIC adopted the Uniform Rules of Practice and Procedure (Rules) (56 FR 37975, Aug. 9, 1991). The Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board of Governors), Office of Thrift Supervision (OTS) and National Credit Union Administration (NCUA) have also adopted the Rules (OCC, 56 FR 38024, Aug. 9, 1991; Board of Governors, 56 FR 38048, Aug. 9, 1991; OTS, 56 FR 38302, Aug. 12, 1991; and NCUA, 56 FR 37762, Aug. 8, 1991). The FDIC is amending one aspect of the Rules relating to ex parte communications to ensure that the Rules conform to the requirements of the APA. The Board of Governors has adopted such an amendment (59 FR 65244, Dec. 19, 1994), and the other agencies have proposed a similar amendment (OCC, 59 FR 63936, Dec. 12, 1994; OTS, 59 FR 62354, Dec. 5, 1994; NCUA, 59 FR 67655, Dec. 30, 1994). The FDIC issued this amendment as a proposed rule on November 29, 1994 (59 FR 60921, Nov. 29, 1994). It is now adopting the rule in the form proposed.

Currently, § 308.9 of the FDIC's Rules of Practice and Procedure (which was adopted as part of the Uniform Rules) prohibits ''a party, his or her counsel, or another person interested in the proceeding'' from making an ex parte communication to any member of the Board of Directors (Board) or other decisional official concerning the merits of an adjudicatory proceeding. When the Uniform Rules were proposed and adopted in 1991, the joint notice of proposed rulemaking (56 FR 27790, 27793) explained that the proposed rule regarding ex parte communications ''adopts the rules and procedures set forth in the APA regarding ex parte communications''. There was no intention at that time to impose a rule more restrictive than that imposed by the APA itself.

The APA contains two provisions relating to communications with agency decision-makers. The APA's ex parte communication provision restricts communications between ''interested person[s] outside the agency'' and the agency head, the administrative law judge (ALJ), or the agency decisional employees. 5 U.S.C. 557(d) (emphasis added). Intra-agency communications are governed by the APA's separation of functions provision, 5 U.S.C. 554(d). That section prohibits investigative or prosecutorial personnel at an agency from ''participat[ing] or advis[ing] in the decision, recommended decision, or agency review'' of an adjudicatory matter pursuant to section 557 of the APA except as witness or counsel.

The same separation of function provision provides that the ALJ in an adjudicatory matter may not consult any party on a fact in issue unless the other parties have an opportunity to participate. 5 U.S.C. 554(d)(1). The separation of functions provision does not prohibit agency investigatory or prosecutorial staff from seeking the amendment of a notice or the settlement or termination of a proceeding.

The rule as proposed and adopted in 1991, however, neglected to mention the separation of functions concept explicitly, and appeared to apply the ex parte communication prohibition to all communications concerning the merits of an adjudicatory proceeding between the agency head, ALJ or decisional personnel on the one hand, and any ''party, his or her counsel, or another person interested in the proceeding'' on the other. The FDIC does not interpret this provision as limiting agency enforcement staff's ability to seek approval of amendments to or terminations of existing enforcement actions. As drafted, however, the provision could be misinterpreted to expand the ex parte communication prohibition beyond the scope of the APA. The FDIC did not intend this result.

The amendment clarifies that the regulation is intended to conform to the provisions of the APA by limiting the prohibition on ex parte communications to communications to or from ''interested persons outside the agency'', 5 U.S.C. 557(d), and by incorporating explicitly the APA's separation of functions provisions, 5 U.S.C. 554(d). This approach is also consistent with the most recent Model Adjudication Rules prepared by the Administrative Conference of the United States.

The FDIC received one comment on the proposed rule, which supported it. The commenter suggested that the FDIC explain the so-called ''Chinese wall'' that prevents those staff members involved in the prosecutorial function from communicating with those who advise the Board on a particular matter. The amended rule specifically sets out the APA's separation of function provision, which prohibits agency prosecutorial personnel in one case from participating in the Board's decision on that or a factually-related case. This provision clearly prevents prosecutorial staff from communicating

about the merits of a case with those staff members who advise the Board regarding a final decision in the case. It is unnecessary to set out internal procedures implementing this statutory prohibition in a formal rulemaking, and to do so could limit the Board's flexibility with respect to internal organization.

**II. Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The final rule makes a minor amendment to a rule of practice already in place, and affects intra-agency procedure exclusively. Thus, it should not result in additional burden for regulated institutions. The purpose of the revised regulation is to conform the provisions of the regulation to those imposed by statute.

**List of Subjects in 12 CFR Part 308**

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Penalties.

**Authority and Issuance**

For the reasons set out in the preamble, 12 CFR part 308 is amended as set forth below:

## PART 308—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 308 is revised to read as follows:

**Authority:** 5 U.S.C. 504, 554–557; 12 U.S.C. 1815(e), 1817(a), 1818(j), 1818, 1820, 1828(j), 1829, 1831i, 1831o; 15 U.S.C. 781(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o, 78o–4(c)(5), 78p, 78q, 78q–1, 78s.

2. In § 308.9, paragraphs (a) and (b) are revised and a new paragraph (e) is added to read as follows:

**§ 308.9 Ex parte communications.**

(a) *Definition.* (1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the FDIC (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, the Board of Directors, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the FDIC until the date that the Board of Directors issues its final decision pursuant to § 308.40(c):

(1) No interested person outside the FDIC shall make or knowingly cause to be made an ex parte communication to any member of the Board of Directors, the administrative law judge, or a decisional employee; and

(2) No member of the Board of Directors, no administrative law judge, or decisional employee shall make or knowingly cause to be made to any interested person outside the FDIC any ex parte communication.

* * * * *

(e) *Separation of functions.* Except to the extent required for the disposition of ex parte matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the FDIC in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under § 308.40 except as witness or counsel in public proceedings.

By Order of the Board of Directors.

Dated at Washington, DC, this 24th day of April, 1995.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Acting Executive Secretary.*

[FR Doc. 95–11481 Filed 5–9–95; 8:45 am]

BILLING CODE 6714–01–P

---

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 94–ANE–45; Amendment 39–9221; AD 95–10–04]**

### Airworthiness Directives; AlliedSignal Inc. (Formerly Textron Lycoming and Avco Lycoming) Model T5313B and T5317 Series Turboshaft Engines

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

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

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) Model T5313B and T5317 series turboshaft engines, that currently requires initial and repetitive dye penetrant inspections of the centrifugal compressor impeller for cracks, and if necessary, removal from service. This amendment requires the use of a new, more conservative minor cycle counting factors table, introduces a method for prorating past centrifugal compressor impeller usage based on the new cycle counting factors, provides an enhanced centrifugal compressor impeller inspection procedure, and eliminates flyback criteria based on crack size. For those centrifugal compressor impellers that exceed their published life limit, this amendment implements a schedule for safe removal of time-expired parts. This amendment is prompted by a report of an uncontained centrifugal compressor impeller failure and subsequent rotorcraft accident. The actions specified by this AD are intended to prevent centrifugal compressor impeller failure, which can result in an uncontained engine failure, inflight engine shutdown, or damage to the rotorcraft.

**DATES:** Effective May 25, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 25, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 10, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–45, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from AlliedSignal Inc., 550 Main St., Stratford, CT 06497; telephone (203) 385–5452. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:** On April 14, 1986, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 86–09–05,

Amendment 39–5293 (51 FR 16506, May 5, 1986), applicable to Avco Lycoming Models T5313B and T5317A turboshaft engines, to require initial and repetitive dye penetrant inspections of the centrifugal compressor impeller for cracks, and if necessary, removal from service. That action was prompted by reports of two centrifugal compressor impellers found cracked at the pressure equalization holes, and one impeller that had ruptured, causing an uncontained engine failure. That condition, if not corrected, could result in centrifugal compressor impeller failure, which can result in an uncontained engine failure, inflight engine shutdown, or damage to the rotorcraft.

Since the issuance of that AD, the FAA has received a report of an accident of a rotorcraft performing repetitive heavy lift (RHL) operations that was caused by an uncontained failure of a centrifugal compressor impeller installed on an AlliedSignal Inc. Model T5317A engine. On October 28, 1994, AlliedSignal Inc. purchased the turbine engine product line from Textron Lycoming. The centrifugal compressor impeller failure was caused by a low cycle fatigue (LCF) crack that initiated and propagated to failure in one of two pressure equalization holes. Following this accident AlliedSignal Inc. has performed engineering analysis that has determined that the existing impeller specific cyclic counting factors were insufficient to account for RHL operations. Updated operator mission profiles and analysis has shown that minor cycle LCF damage associated with RHL operation is greater than previously calculated. Previous inspection instructions required by AD 86–09–05 could result in incomplete inspection of the pressure equalization holes. Experience has shown that cracks in these holes may initiate at the interior of the centrifugal compressor impeller.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin (SB) No. T5313B/17–0020, Revision 4, dated July 5, 1994, that revises the impeller minor cycle counting factors for cyclic computation, and provides a method for prorating past centrifugal compressor impeller usage based on the new cycle counting factors. Also, for those centrifugal compressor impellers that exceed their published life limit, this SB implements a schedule for safe removal of time-expired parts. In addition, the FAA has reviewed and approved the technical contents of Textron Lycoming SB No. T5313B/17 0052, Revision 2, dated December 16, 1993, that describes enhanced inspection procedures for greater inspection reliability, and removes flyback criteria based on crack size.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 86–09–05 to require the following actions: utilization of a new, more conservative minor cycle counting factors table, introduction of a method for prorating past centrifugal compressor impeller usage based on the new cycle counting factors, an enhanced centrifugal compressor impeller inspection procedure, and elimination of flyback criteria based on crack size. For those centrifugal compressor impellers that exceed their published life limit, this amendment implements a schedule for safe removal of time-expired parts. The actions are required to be accomplished in accordance with the service bulletins described previously.

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

## Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 94–ANE–45.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5293 (51 FR 16506, May 5, 1986), and by adding a new airworthiness directive,

Amendment 39–9221, to read as follows:

**95–10–04 AlliedSignal Inc.:** Amendment 39–9221. Docket 94–ANE–45. Supersedes AD 86–09–05, Amendment 39–5293.

*Applicability:* AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) Model T5313B and T5317 series turboshaft engines, installed on but not limited to Bell 205 series rotorcraft.

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

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

To prevent centrifugal compressor impeller failure, which can result in an uncontained engine failure, inflight engine shutdown, or damage to the rotorcraft, accomplish the following:

(a) Within seven days after the effective date of this airworthiness directive (AD), conduct a revised centrifugal compressor impeller operating cycle count (prorate) in accordance with paragraph 2.E. of Textron Lycoming Service Bulletin (SB) No. T5313B/17–0020, Revision 4, dated July 5, 1994.

(b) Following the revised operating cycle count required by paragraph (a) of this AD, remove from service centrifugal compressor impellers installed on rotorcraft that exceed their life limit on the effective date of this AD, within 50 hours time in service (TIS), or 25 operating cycles, whichever occurs first, and replace with a serviceable part that does not exceed the life limit.

(c) Following the revised operating cycle count required by paragraph (a) of this AD, reinstallation of uninstalled centrifugal compressor impellers that exceed their life limit is prohibited.

(d) Inspect centrifugal compressor impellers, Part Numbers (P/N) 1–100–078–07 and 1–100–078–08, in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993, as follows:

(1) For those centrifugal compressor impellers installed on AlliedSignal Inc. Model T5313B engines, accomplish the following:

(i) For centrifugal compressor impellers with equal to or greater than 4,600 cycles in service (CIS) on the effective date of this AD, initially inspect within 200 CIS after the effective date of this AD.

(ii) For those centrifugal compressor impellers with less than 4,600 CIS on the effective date of this AD, initially inspect no later than 4,800 CIS.

(2) For those centrifugal compressor impellers installed on AlliedSignal Inc. T5317 series engines, accomplish the following:

(i) For those centrifugal compressor impellers with equal to or greater than 3,500 CIS on the effective date of this AD, initially inspect within 200 CIS after the effective date of this AD.

(ii) For those centrifugal compressor impellers with less than 3,500 CIS on the effective date of this AD, initially inspect no later than 3,700 CIS.

(3) Centrifugal compressor impellers found cracked in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993, must be removed from service and replaced with a serviceable part that does not exceed the life limit.

(4) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 500 CIS since last inspection in accordance with the Accomplishment Instructions of Textron Lycoming SB No. T5313B/17–0052, Revision 2, dated December 16, 1993.

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

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

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

(g) The actions required by this AD shall be done in accordance with the following Textron Lycoming service bulletins:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| No. T5313B/17–0052 ..... Total pages: 8. | 1–8 | 2 | December 16, 1993. |
| No. T5313B/17–0020 ..... Total pages: 14. | 1–14 | 4 | July 5, 1994. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Inc., 550 Main St., Stratford, CT 06497; telephone (203) 385–5452. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 25, 1995.

Issued in Burlington, Massachusetts, on May 1, 1995.

**James C. Jones,**

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

[FR Doc. 95–11353 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–13–P

---

## Federal Aviation Administration

## 14 CFR Part 121

**[Docket No. 27065; Amendment 121–237]**

**RIN 2120–AE43**

## Federal Railroad Administration

## 49 CFR Part 219

**[Docket No. RSOR–6]**

**RIN 2130–AA81**

## Federal Highway Administration

## 49 CFR Part 382

**[Docket No. MC–116, MC–92–19, MC–92–23]**

**RIN 2125–AA79, 2125–AC85, 2125–AD06**

## Federal Transit Administration

## 49 CFR Part 654

**[Docket No. 92–I]**

**RIN 2132–AA38**

## Suspension of Pre-employment Alcohol Testing Requirement

**AGENCIES:** Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** The United States Court of Appeals for the Fourth Circuit recently issued a decision that vacated the pre-employment alcohol testing requirements of the Federal Highway Administration's alcohol testing rule. The Court remanded this provision to the agency for further proceedings consistent with its opinion. While the pre-employment alcohol testing requirements of the Federal Transit Administration, Federal Railroad Administration, and Federal Aviation Administration were not before the Court in the case, the rationale of the Court's decision applies to these requirements as well. For these reasons, the Department is suspending the pre-employment alcohol testing requirements of each of the four operating administrations until further notice.

**DATES:** This rule is effective May 10, 1995, except for the amendment 49 CFR 382.301 which is effective May 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** For general questions, the Office of General Counsel (202–366–9306). For questions regarding a specific operating administration, please call the following people: FTA—Judy Meade (202) 366–2896, FRA—Lamar Allen (202) 366–0127, FHWA—Office of Motor Carrier Research and Standards (202) 366–1790, FAA—Bill McAndrew (202) 366–6710.

**SUPPLEMENTARY INFORMATION:** In its April 5, 1995, decision in *American Trucking Associations, Inc.* v. *FHWA,* the U.S. Court of Appeals for the Fourth Circuit vacated the FHWA's pre-employment alcohol testing rule and remanded it to the agency for further rulemaking consistent with its opinion. The rule implemented the Omnibus Transportation Employee Testing Act of 1991, which required pre-employment testing ''for use, in violation of law or Federal regulation, of alcohol or a controlled substance.'' The rule required commercial motor vehicle employers to administer pre-employment tests to a new driver. The test could occur at any time up to the performance of the driver's first safety-sensitive activity and thus permitted administration of the test either before or after the driver was hired. In vacating and remanding the rule, the court made the following key findings:

- Giving employers the option of conducting ''pre-hire'' pre-employment tests did not satisfy the Act's requirement of testing for alcohol use ''in violation of law or Federal regulation'' since alcohol consumption prior to a job application is generally not illegal.
- If the agency believes that ''pre-employment'' testing also means ''pre-activity'' testing, then it should require the driver to be tested before the performance of each safety-sensitive activity, not just his first.
- The agency's explanation to the court that ''pre-activity'' testing was permitted in order to reconcile the Act's pre-employment testing requirement with its reference to unlawful alcohol use was not supported by the rulemaking record.
- On remand, the agency should consider whether ''pre-employment'' could reasonably mean anything other than ''pre-hire.'' The court noted that it likely did not. The agency should also determine whether Congress intended pre-employment alcohol testing to apply only to the small group of drivers for whom prehire alcohol use might be illegal and estimate how many job applicants will fall into this group.
- The court rejected ATA's alternative argument that FHWA had the statutory authority to waive all drivers from the pre-employment alcohol testing requirement and agreed with FHWA that such an all-encompassing waiver would effectively repeal the requirement and would thus be impermissibly broad.

This decision did not vacate the pre-employment alcohol testing regulations of the other modes, which were not before the court, but these regulations are based on parallel statutory language, and the rationale of the court's decision applies to them as well.

Because the Court's decision has vacated FHWA's pre-employment alcohol testing rule and created substantial uncertainty about the legal validity of the other operating administration's rules, the Department has decided to suspend all four pre-employment alcohol testing rules at this time. This suspension will be until further notice. Following its consideration of the issues involved on remand from the Court, the Department will decide what course of action to follow (e.g., withdrawal or amendment of the requirements, consistent with the Court's opinion). Such action would be taken through the rulemaking process.

As a result of this action, large employers regulated by FHWA are not required to do pre-employment alcohol testing. Employers regulated by FTA, FAA, and FRA who have begun testing are not required to continue pre-employment alcohol testing. Employers who are scheduled to begin pre-employment alcohol testing at a later date (e.g., January 1, 1996) will not be required to do so. Any employer may conduct pre-employment alcohol testing under its own authority. Because of the Court's decision and this suspension, employers who wish to continue such testing may not claim a basis in Federal law or regulation for doing so, however. We would also emphasize that this action applies only to pre-employment alcohol testing. Drug testing, and other types of alcohol tests, are not affected.

As announced by Secretary of Transportation Federico Pena before the Court's decision was issued, the Department is sending a proposed bill to

Congress that would make pre-employment alcohol testing discretionary with employers. This legislation is based on the Administration's policy of eliminating regulations that are unnecessary or too costly and burdensome. It would clarify that employers are not required to conduct such testing, but have the option of doing so under the authority of Federal law.

**Regulatory Process Matters**

*DOT Regulatory Policies and Procedures*

The final rule is considered to be a nonsignificant rulemaking under DOT Regulatory Policies and Procedures, 44 FR 11034. It also is a nonsignificant rule for purposes of Executive Order 12886. The Department estimated, at the time it issued its final alcohol testing rules in February 1994, that pre-employment alcohol testing in the four operating administrations would cost approximately $28 million per year. Suspending the rules will proportionally save these expenditures during the period the suspension is in effect.

*Executive Order 12612*

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

*Immediate Effectiveness and Issuance Without Prior Notice and Comment*

Because it is necessary for the Department immediately to implement the Court's decision, because the Department does not have any discretion with respect to compliance with this decision, and because the Department must promptly resolve any legal uncertainty over the validity of pre-employment alcohol testing the decision has created, the Department finds that there is good cause to make this rule effective immediately. For the same reasons, the Department finds that prior notice and public comment would be impracticable, unnecessary, and contrary to the public interest.

**FAA**

**List of Subjects in 14 CFR Part 121**

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

For the reasons set out in the preamble, the Federal Aviation Administration amends 14 CFR part 121, as follows:

## PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1485, and 1502 (revised Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. In Appendix J, Sec. III, subsection A (''Pre-employment'') is suspended as of May 10, 1995.

Issued in Washington, DC on May 3, 1995.

**David R. Hinson,**

*Administrator, Federal Aviation Administration.*

**FRA**

**List of Subjects in 49 CFR Part 219**

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FRA amends 49 CFR Part 219, as follows:

## PART 219—CONTROL OF ALCOHOL AND DRUG USE

1. The authority for part 219 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; Pub. L. 103–272 (July 5, 1994); and 49 CFR 1.49(m).

2. In § 219.501, paragraph (f) is added to read as follows:

**§ 219.501 Pre-employment tests.**

* * * * *

(f) Notwithstanding any other provisions of this subpart, all provisions and requirements in this section pertaining to preemployment testing for alcohol are suspended as of May 10, 1995.

Issued in Washington, DC on May 3, 1995.

**Jolene M. Molitoris,**

*Administrator, Federal Railroad Administration.*

**FHWA**

**List of Subjects in 49 CFR Part 382**

Alcohol and drug abuse, Highway safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the FHWA amends 49 CFR Part 382, as follows:

## PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

1. The authority for part 382 continues to read as follows:

**Authority:** 49 U.S.C. 31306; 49 U.S.C. app. 31201 et. seq.; 49 U.S.C. 31502; 49 CFR 1.48.

2. In § 382.301, paragraph (e) is added to read as follows:

**§ 382.301 Pre-employment testing.**

(e) Notwithstanding any other provisions of this subpart, all provisions and requirements in this section pertaining to preemployment testing for alcohol are suspended as of May 1, 1995.

Issued in Washington, DC on May 3, 1995.

**Rodney Slater,**

*Administrator, Federal Highway Administration.*

**FTA**

**List of Subjects in 49 CFR Part 654**

Alcohol testing, Grant programs-transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set out in the preamble, the Federal Transit Administration amends 49 CFR Part 654, as follows:

## PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

1. The authority for part 654 continues to read as follows:

**Authority:** 49 U.S.C. 5331; 49 CFR 1.51.

2. Section 654.31 is suspended as of May 10, 1995.

Issued in Washington, DC on May 3, 1995.

**Gordon J. Linton,**

*Administrator, Federal Transit Administration.*

[FR Doc. 95–11522 Filed 5–8–95; 11:27 am]

BILLING CODE 4910–62–P

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 5

## Delegations of Authority to the Commissioner of Food and Drugs

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority

by adding a new authority delegation from the Assistant Secretary for Health to the Commissioner of Food and Drugs for certain authorities delegated to the Assistant Secretary for Health under the Controlled Substances Act (as amended). The delegation excludes the authority to submit reports to Congress.

**EFFECTIVE DATE:** May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ellen R. Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

**SUPPLEMENTARY INFORMATION:** On June 22, 1993, the Secretary of Health and Human Services delegated to the Assistant Secretary for Health authorities vested in the Secretary under the Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 811(h)(4)), as amended). On May 16, 1994, the Assistant Secretary for Health delegated to the Commissioner of Food and Drugs these same authorities. These authorities concern providing responses to the Drug Enforcement Administration's temporary scheduling notices made under the Controlled Substances Act, as amended. This delegation excludes the authority to submit reports to Congress.

Further redelegation of the authority delegated may only be authorized with the Commissioner's approval. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

### List of Subjects in 21 CFR Part 5

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

## PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

**Authority:** 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 354, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.10 is amended by adding new paragraph (a)(37) to read as follows:

**§ 5.10 Delegations from the Secretary, the Assistant Secretary for Health, and Public Health Service Officials.**

(a) * * *

(37) Functions vested in the Secretary under section 811(h)(4) of the Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended) to provide responses to the Drug Enforcement Administration's temporary scheduling notices. The delegation excludes the authority to submit reports to Congress.

* * * * *

Dated: May 2, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 95–11525 Filed 5–9–95; 8:45 am]

BILLING CODE 4160–01–F

---

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 164

## 46 CFR Parts 50, 52, 56, 58, 61, and 111

**[CGD 83–043]**

**RIN 2115–AB41**

## Incorporation of Amendments to the International Convention for Safety of Life at Sea, 1974

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is modifying its regulations on navigational safety and marine engineering to harmonize them with the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74), as amended, and to allow the use of current technology. This final rule is necessary because changes have been made to SOLAS 74 and new technology has become available. The incorporation of SOLAS 74 as amended will enhance the safety of personnel and vessels, protect the natural environment, and contribute to domestic carriers' improved competitiveness in the global market.

**DATES:** This final rule is effective on June 9, 1995. The Director of the Federal Register approves as of June 9, 1995 the incorporation by reference of certain materials listed in this rule.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander R.K. Butturini, Engineering Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, (202) 267–2206.

**SUPPLEMENTARY INFORMATION:**

Drafting Information: The principal persons involved in drafting this final rule are Lieutenant Commander R.K. Butturini, Project Manager, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Regulatory History.

On September 28, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Incorporation of Amendments to the International Convention for Safety of Life at Sea, 1974'' (55 FR 39638). The Coast Guard received three letters commenting on the NPRM. No public hearing was requested, and none was held.

### Background and Purpose

On November 1, 1974, the Assembly of the Inter-Governmental Maritime Consultative Organization (IMCO) adopted SOLAS 74. In May 1982 IMCO was renamed the International Maritime Organization (IMO). Invoking Article VIII of SOLAS 74, which contained procedures for amending SOLAS 74, IMO adopted further resolutions; these resolutions recommended areas of SOLAS 74 in need of improvement. The United States was instrumental in the development of SOLAS 74 and its amendments.

To date, three sets of amendments have been adopted. The first set of amendments was approved by the Maritime Safety Committee (MSC) of IMO on November 20, 1981, and became effective on September 1, 1984. These amendments deal primarily with subdivision and stability, machinery and electrical installations, periodically unattended machinery spaces, and measures for fire safety. The second set of amendments was approved by the MSC on June 17, 1983, and became effective on July 1, 1986. These amendments deal primarily with appliances and arrangements for lifesaving and with the carriage of dangerous goods. The third set of amendments was approved by the MSC on April 11, 1989, and became effective on February 1, 1992. These amendments address amendments to SOLAS 74 that could not be included in the 1983 SOLAS amendments, and include

changes to requirements for bilge systems and fuel systems for machinery.

Since the U.S. is signatory to this international treaty, periodic upgrades of domestic regulations for the safety of personnel, and of vessels inspected by the Coast Guard, are necessary to align our regulations with SOLAS 74, as amended. Through such upgrades, these regulations will come to comprise the international standards for the safety of personnel and vessels at large. Generally, the amendments to SOLAS 74 impose higher standards than our current regulations, and these standards should lead to fewer casualties among vessels. Therefore, the Coast Guard is applying the standards to all new inspected vessels subject to Subchapter F, regardless of size or type of voyage, except as otherwise specified in this final rule.

This final rule adopts standards from Chapters II–1, II–2, and V of SOLAS 74 contained in the first set of amendments (1981) and third set of amendments (1989). This rule does not adopt standards contained in the second set of amendments (1983), because they are the subject of a separate rulemaking. When discussing SOLAS 74, as amended, this rule will cite the applicable numbers of paragraph and regulation. For example, SOLAS II–1/29.6 is the reference for Paragraph 6 of Regulation 29 of SOLAS Chapter II–1.

The Coast Guard compared the SOLAS 74 amendments to 46 CFR subchapter F, ''Marine Engineering''. The results appear in the following table. An asterisk (*) in the table means that a requirement appearing in SOLAS 74, as amended, is not now covered by subchapter F but is addressed in this final rule. Since certain requirements of SOLAS 74, as amended, tabulated below have already been adopted into 46 CFR part 62—VITAL SYSTEM AUTOMATION, they are not included in this final rule.

| 1981 SOLAS amendments | Corresponding U.S. regulation |
|---|---|
| Chapter II–1. | (Cites to Title 46, Code of Federal Regulations, unless otherwise specified). |
| 3 | §§ 58.25*, 62.30–5. |
| 20.2 | § 56.50–85*. |
| 21 | §§ 56.50–50, 56.50–55, 62.30–5. |
| 26.1 | Parts 52, 54, 56; §§ 58.01–20, 58.05–1, 62.25–30. |
| 26.2 | §§ 58.01–35, 62.25–1, 62.30–5. |
| 26.3 | §§ 52.01–10, 56.50–30, 56.50–35, 56.50–45, 56.50–65, 56.50–80, 58.05–1, 58.01–35, 62.25–1, 62.30–5, 111.10–3, 111.10–5, 111.35–1, 112.05–1. |
| 26.4 | §§ 58.01–35, 62.30–5, 111.10–76. |
| 26.5 | §§ 52.01–135, 54.10, 56.95, 56.97. |
| 26.6 | §§ 58.01–40*, 62.20–5, 62.25–30. |
| 26.8 | § 58.05–1. |
| 27.1 | §§ 58.05–1, 58.10–15, 62.25–1, 62.25–15, 111.12–1. |
| 27.2 | §§ 52.01–120, 54.15, 56.07–10, 58.05–1. |
| 27.3 | § 58.05–1. |
| 27.4 | § 58.05–1. |
| 27.5 | §§ 56.50–80, 58.05–1, 58.05–10*, 58.10–15, 62.25–1, 62.25–15, 62.30–5, 62.35–5, 111.12–1. |
| 28.1 | § 58.05–5. |
| 28.2–28.4 | 33 CFR 164.35; 46 CFR 35.20–40, 78.21, 97.19. |
| 29 & 30 | 33 CFR 164.11*, 33 CFR 164.39*; 46 CFR § 58.25*. |
| 31 | §§ 61.40–1, 62.01–1, 62.01–3, 62.01–5, 62.20–1, 62.20–3, 62.25–1, 62.25–5, 62.25–10, 62.25–20, 62.30–5, 62.30–15, 62.35–5, 62.35–10, 62.50–1, 62.50–20. |
| 32.1 | § 52.01–120. |
| 32.2 | §§ 62.25–1, 62.35–20. |
| 32.3 | § 52.01–110*. |
| 32.4 | § 56.50–30. |
| 32.5 | §§ 52.01–115, 56.50–30. |
| 32.6 | § 52.01–110. |
| 33.1 | § 56.07–10. |
| 33.2 | § 56.50–15*. |
| 33.3 | §§ 56.07–10, 56.50–10, 56.50–15. |
| 34.1 | § 58.30–5. |
| 34.2 | §§ 58.05–1, 58.30–534.3 § 58.05–1. |
| 34.4 | § 58.30–5*. |
| 35 | § 58.01–45*. |
| 36 | § 58.01–50*. |
| 37 | §§ 62.35–5, 113.30–5, 113.35–3. |
| 38 | § 113.27–1. |
| 39 | § 56.50–55. |
| 46—54 | §§ 61.40–1, 62.01–1, 62.01–3, 62.20–1, 62.20–3, 62.25–1, 62.25–15, 62.25–20, 62.30–1, 62.30–5, 62.30–15, 62.35–5, 62.35–10, 62.50–1, 62.50–20, 62.50–30. |
| Chapter II–2: | |
| 15.1 | §§ 58.01–10*, 58.01–15*, 112.50–1. |
| 15.2 | §§ 56.10, 56.15, 56.20, 56.25, 56.30, 56.50–60*, 56.50–65, 56.50–70, 56.50–75, 56.50–85*, 56.50–90*, 58.01–55*. |
| 15.3 | §§ 56.50–60*, 56.50–90*, 58.01–55*. |
| 15.4 | § 56.50–60*. |
| 15.5 | §§ 62.35–40, 62.50–30. |
| 15.6 | 33 CFR 155.470. |
| 18.1 & 18.2. | §§ 56.50–1, 56.50–5, 56.50–95. |
| 51 | § 58.16. |
| 54.2.5 | § 56.50–50*. |
| 59.1.6 | § 56.50–85*. |
| Chapter V: | |
| 19 | § 58.25–85*. |

| 1989 SOLAS amendments | Corresponding U.S. regulation |
|---|---|
| Chapter II–1. | (Cites to Title 46, Code of Federal Regulations, unless otherwise specified). |
| 21.1.6 | § 56.50–50*. |
| 21.2.9 | § 56.50–50*. |
| Chapter II–2: | |
| 15.2.6 | §§ 56.50–60*, 56.50–90*. |
| 15.3 | §§ 56.50–80*, 56.50–90*. |
| Chapter V: | |
| 12 | 33 CFR 164.35*. |

A final rule concerning Intervals for Drydocking and Tailshaft Examination on Inspected Vessels [CGD 84–024] went into effect on September 23, 1988. It changed the interval for drydocking vessels from one inspection every two years to inspections in multiples of thirty months (i.e., two inspections within any five-year period, except that no more than three years may elapse between any inspection and its immediate predecessor). But it left the interval for inspecting major machinery at two years. Because of this continued misalignment of inspection intervals for drydockings and major machinery, that rule causes a hardship for owners of some vessels. The most opportune time for inspecting major machinery—boilers and pressure vessels—is during drydocking, when the machinery is secured. This final rule allows intervals for inspecting major machinery to coincide with those for drydocking. The inspection interval has not been changed for those cases where inspection of machinery does not depend on the vessels' being drydocked.

There have been continuing proposals by designers of vessels, by shipyards, and by shipowners for the use of nonmetallic piping in concealed spaces aboard ship. Current domestic regulations prohibit this use of nonmetallic piping unless the piping is within trunks completely surrounded by ''A'' class divisions. SOLAS 74, as amended, does not preclude this use of nonmetallic piping, while classification societies, as well as the International Association of Classification Societies, permit it. Therefore, this final rule provides alternative requirements for piping in concealed spaces and permits the installation of nonmetallic piping under certain restrictions. The change

will reduce the costs of constructing vessels.

Current domestic regulations require certain cargo ships to have three powered bilge pumps. SOLAS 74, as amended, and many classification societies have successfully permitted these ships to have only two powered bilge pumps. This final rule aligns domestic regulations with SOLAS 74. The change will reduce the costs of outfitting U.S.-flag vessels.

For many years domestic regulations have also required each individual bilge suction to be led from one or more manifolds located within the same space as the bilge pump. In the early 1970s, the Coast Guard developed regulations permitting common-rail bilge and ballast systems for cargo spaces on multi-purpose bulk carriers that can lift combinations of both liquid and dry bulk cargoes (O/B/O) and that ply the Great Lakes. Since then, several designers of vessels have asked to install common-rail bilge systems on cargo and passenger vessels. The Coast Guard has, by policy, accepted all of these systems provided they satisfied certain other design restrictions. The main concern with accepting any of them is the risk of losing suction for the entire system if the common line fails or leaks. The additional criteria reduce that risk and make the system equivalent to the conventional manifold system. Such a common-rail system is acceptable under SOLAS 74, as amended. This final rule permits these systems on all vessels as an equivalent alternative to the existing requirements for manifold systems.

Until now, domestic regulations have required, for all vessels subject to 46 CFR subchapter F and not fitted with an auxiliary means of steering, dual-power hydraulic steering apparatus having two independent pumps and connections. Each independent steering-gear power unit must be capable of meeting the rudder-movement standard of 35° on one side to 30° on the other side in not more than 28 seconds. These regulations are not consistent with the 1981 amendments to SOLAS 74. For passenger vessels without auxiliary steering systems, SOLAS 74, as amended, requires that main steering gear, consisting of two or more identical power units, be capable of meeting the same rudder-movement standard with any one unit out of service. For cargo vessels without auxiliary steering systems, SOLAS 74, as amended, requires that main steering gear be capable of meeting the same rudder-movement standard with all power units in service. The Coast Guard does not consider the 1981 amendments to SOLAS 74 to compromise the safety of the vessel, and therefore, by this final rule, modifies current regulations for dual-power hydraulic steering apparatus to coincide with SOLAS 74, as amended.

**Discussion of Comments and Changes**

A total of three comment letters were received. The letters were supportive of the efforts by the Coast Guard to incorporate industry standards by reference. Two letters also offered specified comments on individual sections of the proposed rule. The third letter simply endorsed the comments of one of the first two letters. Additionally, the Coast Guard received recommendations from the National Transportation Safety Board (NTSB) asking for clarification of one of the regulations modified in the proposed rules. The sections of the proposed rule to which comments were addressed are discussed below, as are each comment and the Coast Guard's response.

*1. 33 CFR 164.11(t)*

The proposed rule implements the standards of SOLAS 74 II–1/29.6 and II–1/29.15. Current paragraph (t) requires that, while a vessel is under way on the navigable waters of the U.S., except the St. Lawrence Seaway, at least two of the steering-gear power units be in operation when the units are capable of simultaneous operation. That paragraph embodies SOLAS 74 V/19–1. SOLAS 74 II–1/29.6 and II–1/29.15 impose a performance standard on steering-gear systems. A combination of power units may be operated simultaneously to meet the performance standard of moving the rudder from 35° on one side to 30° on the other side in not more than 28 seconds.

The NTSB's recommendations arose from the grounding of the MOBILOIL in 1985 and the collision of the MANDAN with moored barges in 1990. Both casualties involved loss of steering. The recommendations called for clarification of current § 164.11(t).

The Coast Guard agrees with the need for clarity and therefore both revises proposed § 164.11(t) and adds § 164.11(u). Revised § 164.11(t) applies to both foreign and domestic vessels and requires the operation of at least two steering-gear power units when the power units are designed for simultaneous operation. Excepted from this requirement are vessels on the Great Lakes and vessels covered by § 164.11(u). New § 164.11(u) applies to newer foreign and domestic vessels and, consistent with SOLAS 74, as amended, imposes a standard of performance instead of a specification of design.

*2. 46 CFR 56.50–50*

This section was intended by the proposed rule to implement the standards of SOLAS 74 II–2/54.2.5. Paragraph (a)(4) requires that bilge systems, when they serve enclosed cargo spaces carrying flammable or toxic liquids, be designed to prevent the inadvertent pumping of flammable or toxic liquids through machinery-space piping or pumps.

One comment suggested that the final rule also address Class 8 dangerous goods because SOLAS 74 II–2/54.2.5 applies to these goods as well.

The Coast Guard agrees with the comment as consistent with the intent of the proposed rule and has included the reference to Class 8 dangerous liquids with a flashpoint below 23°C (74°F) in this final rule. In addition, since SOLAS applies the flashpoint limit to the Class 3 flammable liquids, the Coast Guard also applies it to them.

One comment suggested stipulating a specific minimal quantity of dangerous goods, which would require invoking the proposed change to this section.

The Coast Guard disagrees with this comment since there is no similar approach in the standard of SOLAS on which it is based. Further, it would be difficult to stipulate a specific minimal quantity of dangerous goods that would not need regulation.

One comment suggested calling the machinery space the ''main machinery'' space.

The Coast Guard disagrees with the comment since this would change the applicability of the section. Such a narrow interpretation of SOLAS 74 in this regard is unwarranted. The rules will continue to use the terminology of SOLAS 74.

*3. 46 CFR 56.60–25*

This section was intended by the proposed rule to codify current Coast Guard policy. Paragraph (a) allows the use of nonmetallic piping for nonvital freshwater and saltwater service, to run in concealed spaces. The Coast Guard has allowed this use, considering further design criteria, such as the fire integrity of bulkheads, the proper maintenance of decks and draft stops, or the installation in the concealed space of an approved smoke-detection system. Current regulations require this piping to be of metallic construction or to be nonmetallic piping surrounded by ''A'' class divisions. SOLAS 74, as amended, does not preclude nonmetallic piping for this use.

One comment suggested recognizing CPVC and polybutylene as acceptable materials under this section because of their extensive use elsewhere.

The Coast Guard agrees that much progress is being made in the evaluation and testing of plastic materials for piping and that expanding the acceptance of these materials in Coast Guard regulations should be addressed. The Coast Guard feels, however, that this comment goes beyond the scope of this final rule. CPVC and polybutylene will be further evaluated, and addressed in a future rulemaking. Moreover, IMO is currently working on specific guidelines for the acceptance of these materials, and further developments on the topic will affect Coast Guard policy on these materials. Current regulations do not preclude the use of materials not meeting ASTM F1173. The requirements for the use of these materials appear in current § 56.60–25(a)(10).

One comment suggested that the use, along with plastic piping, of metallic spool pieces at all bulkhead penetrations would be equivalent to requiring a smoke-detection system in concealed accommodation or service spaces.

The Coast Guard disagrees with this comment. The early detection of fires or smoke in concealed spaces is vital, and metallic spool pieces do not enable it.

One comment suggested clarification of § 56.60–25(a)(3)(i) to clearly allow the use of plastic piping outside trunks or ducts if inside a concealed space within ''A'' class boundaries.

The Coast Guard disagrees with this comment. Under the comment's definition, a concealed space spanning several ''B'' class boundaries could have plastic piping as long as ''A'' class boundaries surround the overall space. The wording in the proposed rule has not been changed.

One comment suggested allowing smoke detectors, located adjacent to but not in the concealed space, to replace required detectors in the space.

The Coast Guard disagrees with this comment, which assumes that a fire would never start in a concealed space with plastic piping but that any fire would come from the adjacent space. The burning of the plastic piping in a concealed space is the concern, and the sensors should be located so as to most readily detect the concealed fire. The requirement for sensors in the concealed space as stated in the proposed rule remains.

*4. 46 CFR 58.25–65*

This section was intended by the proposed rule to move, from subchapter J to subchapter F, requirements applicable to steering systems. Paragraphs (a) through (d) simply restate requirements from current 46 CFR 111.93–7 that cover feeder circuits serving electric-driven steering-gear power units. This section reflects interpretations by the Coast Guard of applicable requirements in SOLAS 74 II–1/29.14 and II–1/30.2.

One comment suggested that use of the size of the rudder stock as a criterion for determining whether one of the electrical feeders should be supplied from an alternative source of power was ambiguous. The comment further suggested use of some other, more definite criterion, such as number of passengers or gross tonnage.

The size of the rudder stock closely correlates with the overall size and speed of the vessel, and use of it as a criterion comes from SOLAS 74 II–1/29.14. Because this regulation applies to both cargo and passenger vessels, making the number of passengers the criterion would be inappropriate.

The Coast Guard has found gross tonnage to be unreliable when used for drawing regulatory lines. Besides, the intent of the final rule is to harmonize regulations of the Coast Guard with standards of SOLAS, not to impose requirements that exceed those of SOLAS. Since this part of the proposed rule does not deviate from current regulations and will not cause a burden on industry, it has not been changed.

*5. 46 CFR 61.05–10*

This section was intended by the proposed rule to change Table 61.05–10 and § § 61.05–10, 61.05–15, 61.05–20, 61.10–5, and 61.15–5, aligning intervals for inspections and tests of major machinery with new intervals for drydockings of vessels. Generally, current regulations require inspections of major machinery, such as pressure vessels and boilers, in two-year multiples, to coincide with a vessel's regular inspection for certification. Numerous owners and operators have insisted that such scheduling creates an economic hardship since an inspection for certification is not always the appropriate time for an inspection of a boiler or a pressure vessel. Rather, these owners and operators suggest, the intervals for drydockings are more appropriate as the intervals also for such inspections and tests of major machinery. The Coast Guard agrees and has proposed that inspections of major machinery occur, like drydockings, at a rate of two inspections in any five-year period, with no more than three years between any inspection and its immediate predecessor. Also, a new Table 61.05–10 collects into a single table the intervals for all inspections and tests of boilers, except of automation controls. Since this should decrease a vessel's time out of service, the owners and operators should realize economic savings.

One comment suggested defining ''hybrid boilers'' as used in Note 3 to Table 61.05–10.

The Coast Guard defines ''hybrid boilers'' as boilers that employ design features from both traditional watertube and firetube boilers. This final rule defines them so in § 52.01–3.

**Incorporation by Reference**

The Director of the Federal Register has approved the materials listed in 33 CFR 164.03 and 46 CFR 58.03–1(b) for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The materials are available as indicated in those sections.

**Regulatory Evaluation**

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034 (February 26, 1979)). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Assessment is unnecessary. The net benefits due to savings from this rule should outweigh the burden.

As discussed in *Background and Purpose,* above, the main purpose of this final rule is to incorporate into domestic regulations amendments to the International Convention for Safety of Life at Sea, 1974, addressing issues of marine engineering. U.S.-flag cargo and tank vessels of 500 gross tons and more, and passenger vessels carrying more than twelve passengers and engaged on international voyages, already must comply with SOLAS 74, as amended. Thus, this rule will have no economic impact on these vessels. This rule does, however, affect vessels that need not yet comply with SOLAS 74, as amended, as such, since the Coast Guard, in general, is applying the standards of the treaty to all new domestic vessels subject to subchapter F.

Although some of the changes due to SOLAS 74 will result in minor increases in cost, others will result in savings that more than offset these increases. Many of the changes reflect current practice of the marine industry or can be integrated readily into the design of the vessel before construction and will place no direct burden on the industry. The changes that will place the greatest

economic burden upon the industry affect steering gear. However, the increase in cost associated with accomplishing the changes represents a small fraction of the total cost for a steering system and should be offset by the savings anticipated from the reduction in the number and cost of casualties.

The remaining changes in this final rule are not due to SOLAS 74: Greater use of common-rail bilge systems, an increase in the inspection interval for major machinery, and greater use of plastic piping in concealed spaces. These changes will bring only savings to the marine industry. On the bilge system and on plastic piping, this rule permits, without reducing safety, attractive alternatives to the expensive means required by the current regulations. Also, by enlarging the interval for inspection of major machinery, to make the inspection coincide with the vessel's drydocking, this rule will reduce the number of inspections over a vessel's life and reduce the vessel's time out of service, all resulting in long-term savings to the owner.

**Small Entities**

This final rule will apply to owners and operators of commercial vessels registered in the U.S. Few of these, if any, qualify as small entities. Again, the economic impact of this rule on individual owners and operators should be minimal. Therefore, the Coast Guard certifies under section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This final rule imposes on the public no new or added requirements for collecting information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). In particular, it does not change any such requirements in 33 CFR part 164 or 46 CFR part 50, 52, 56, 58, 61, or 111.

**Environment**

The Coast Guard has considered the environmental impact of this final rule and concluded that, under section 2.B.2.c of Commandant Instruction M16475.1B, this rule is categorically excluded from further treatment in environmental documents. A Categorical-Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**Federalism**

The Coast Guard has analyzed this final rule in accordance with the principles and criteria of Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The authority to issue regulations on the navigational safety of the vessels covered by this rule is committed to the Coast Guard by Federal statute. Therefore, the Coast Guard intends to preempt State or local laws on the navigational safety of these vessels.

**List of Subjects**

*33 CFR Part 164*

Incorporation by reference, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

*46 CFR Part 50*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 52*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 56*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 58*

Incorporation by reference, Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 61*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 111*

Reporting and recordkeeping requirements, Vessels.

For the reasons set out in the preamble, the Coast Guard amends Title 33, part 164, and Title 46, parts 50, 52, 56, 58, 61, and 111, of the Code of Federal Regulations, as follows:

**Title 33—[Amended]**

## PART 164—NAVIGATION SAFETY REGULATIONS

1. The authority citation for part 164 continues to read as follows:

**Authority:** 33 U.S.C. 1223, 46 U.S.C. 3703; 49 CFR 1.46(n). Sec. 164.61 also issued under 46 U.S.C. 6101.

2. Section 164.03 is amended by revising paragraph (b) to read as follows:

**§ 164.03 Incorporation by reference.**

* * * * *

(b) The materials approved for incorporation by reference in this part, and the sections affected, are:

Radio Technical Commission for Marine Services, P.O. Box 19087, Washington, DC 20036, Paper 12/78/DO–100 Minimum Performance Standards, Loran C Receiving Equipment, 1977—164.41

International Maritime Organization, 4 Albert Embankment, London SE1 7SR U.K., IMO Resolution A.342(IX), Recommendation on Performance Standards for Automatic Pilots, adopted November 12, 1975—164.13.

3. Section 164.11 is amended by revising its heading and paragraph (t) and by adding paragraph (u) to read as follows:

**§ 164.11 Navigation under way: General.**

* * * * *

(t) At least two of the steering-gear power units on the vessel are in operation when such units are capable of simultaneous operation, except when the vessel is sailing on the Great Lakes and their connecting and tributary waters, and except as required by paragraph (u) of this section.

(u) On each passenger vessel meeting the requirements of the International Convention for the Safety of Life at Sea, 1960 (SOLAS 60) and on each cargo vessel meeting the requirements of SOLAS 74 as amended in 1981, the number of steering-gear power units necessary to move the rudder from 35° on either side to 30° on the other in not more than 28 seconds must be in simultaneous operation.

4. Section 164.35 is amended by adding paragraph (o) to read as follows:

**§ 164.35 Equipment: All vessels.**

* * * * *

(o) A telephone or other means of communication for relaying headings to the emergency steering station. Also, each vessel of 500 gross tons and over and constructed on or after June 9, 1991 must be provided with arrangements for supplying visual compass-readings to the emergency steering station.

5. Section 164.39 is revised to read as follows:

**§ 164.39 Steering gear: Foreign tankers.**

(a) This section applies to each foreign tanker of 10,000 gross tons or more, except a public vessel, that—

(1) Transfers oil at a port or place subject to the jurisdiction of the United States; or

(2) Otherwise enters or operates in the navigable waters of the United States, except a vessel described by § 164.02 of this part.

(b) *Definitions.* The terms used in this section are as follows:

*Constructed* means the same as in Chapter II–1, Regulations 1.1.2 and 1.1.3.1, of SOLAS 74.

*Existing tanker* means a tanker—

(1) For which the building contract is placed on or after June 1, 1979;

(2) In the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after January 1, 1980;

(3) The delivery of which occurs on or after June 1, 1982; or

(4) That has undergone a major conversion contracted for on or after June 1, 1979; or construction of which was begun on or after January 1, 1980, or completed on or after June 1, 1982.

*Public vessel, oil, hazardous materials,* and *foreign vessel* mean the same as in 46 U.S.C. 2101.

*SOLAS 74* means the International Convention for the Safety of Life at Sea, 1974, as amended.

*Tanker* means a self-propelled vessel defined as a tanker by 46 U.S.C. 2101(38) or as a tank vessel by 46 U.S.C. 2101(39).

(c) Each tanker constructed on or after September 1, 1984, must meet the applicable requirements of Chapter II–1, Regulations 29 and 30, of SOLAS 74.

(d) Each tanker constructed before September 1, 1984, must meet the requirements of Chapter II–1, Regulation 29.19, of SOLAS 74.

(e) Each tanker of 40,000 gross tons or more, constructed before September 1, 1984, that does not meet the single-failure criterion of Chapter II–1, Regulation 29.16, of SOLAS 74, must meet the requirements of Chapter II–1, Regulation 29.20, of SOLAS 74.

(f) Each tanker constructed before September 1, 1984, must meet the applicable requirements of Chapter II–1, Regulations 29.14 and 29.15, of SOLAS 74.

**Title 46—[Amended]**

## PART 50—GENERAL PROVISIONS

6. The authority citation for part 50 is revised to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46. Section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

7. Subpart 50.10 is amended by adding § 50.10–35 to read as follows:

### § 50.10–35 Constructed.

The term *constructed* means the keel has been laid or, for vessels with no keel, assembly of at least 50 tons or 1% of the estimated mass of all structural material, whichever is less, has been completed.

## PART 52—POWER BOILERS

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

**Authority:** 46 U.S.C. 3306, 2103, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

9. Section 52.01–3 is amended by adding paragraph (a)(10) to read as follows:

### § 52.01–3 Definitions of terms used in this part.

(a) * * *

(10) *Hybrid boiler.* A hybrid boiler is a steam boiler whose design employs features from both watertube and firetube boilers.

* * * * *

10. Section 52.01–110 is amended by revising its heading and adding paragraph (h) to read as follows:

### § 52.01–110 Water-level indicators, water columns, gauge-glass connections, gauge cocks, and pressure gauges (modifies PG–60).

* * * * *

(h) *High-water-level alarm.* Each watertube boiler for propulsion must have an audible and a visible high-water-level alarm. The alarm indicators must be located where the boiler is controlled.

## PART 56—PIPING SYSTEMS AND APPURTENANCES

11. The authority citation for part 56 is revised to read as follows:

**Authority:** 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757; 49 CFR 1.46.

12. Section 56.15–5 is amended by revising its heading and paragraph (c)(1)(ii) to read as follows:

### § 56.15–5 Fluid-conditioner fittings.

* * * * *

(c) * * *

(1) * * *

(ii) Nonstandard fluid-conditioner fittings that have an internal diameter exceeding 15 centimeters (6 inches) and that are rated for temperatures and pressures exceeding those specified as minimums for Class I piping systems.

* * * * *

13. Section 56.30–25 is amended by adding a note after paragraph (f)(2) to read as follows:

### § 56.30–25 Flared, flareless, and compression joints.

* * * * *

(f) * * *

(2) * * *

**Note**—See § 58.25–20(d) of this subchapter for limitations on the use of compression fittings in hydraulic systems for steering gear.

14. Section 56.50–15 is amended by adding paragraph (k) to read as follows:

### § 56.50–15 Steam and exhaust piping.

* * * * *

(k) Means must be provided for draining every steam pipe in which dangerous water hammer might otherwise occur.

15. Section 56.50–50 is amended by adding paragraphs (a)(4), (a)(5), and (c)(4), revising paragraphs (c)(1), (c)(2), and the definition for ''D'' and adding a Note 6 in paragraph (d)(2), and revising the last sentence of paragraph (h) to read as follows:

### § 56.50–50 Bilge and ballast piping.

(a) * * *

(4) Where the vessel is to carry Class 3 flammable liquids with a flashpoint below 23°C (74°F), Class 6, Division 6.1, poisonous liquids, or Class 8 corrosive liquids with a flashpoint below 23°C (74°F) as defined in 49 CFR part 173, in enclosed cargo spaces, the bilge-pumping system must be designed to ensure against inadvertent pumping of such liquids through machinery-space piping or pumps.

(5) For each vessel constructed on or after June 9, 1995, and on an international voyage, arrangements must be made to drain the enclosed cargo spaces on either the bulkhead deck of a passenger vessel or the freeboard deck of a cargo vessel.

(i) If the deck edge, at the bulkhead deck of a passenger vessel or the freeboard deck of a cargo vessel, is immersed when the vessel heels 5° or less, the drainage of the enclosed cargo spaces must discharge to a space, or spaces, of adequate capacity, each of which has a high-water-level alarm and a means to discharge overboard. The number, size and arrangement of the drains must prevent unreasonable accumulation of water. The pumping arrangements must take into account the requirements for any fixed manual or automatic sprinkling system. In enclosed cargo spaces fitted with carbon-dioxide extinguishing systems, the drains must have traps or other means to prevent escape of the smothering gas. The enclosed cargo spaces must not drain to machinery spaces or other spaces where sources of ignition may be present if water may be contaminated with Class 3 flammable liquids; Class 6, Division 6.1, poisonous liquids; or Class 8 corrosive liquids with a flashpoint below 23°C (74°F).

(ii) If the deck edge, at the bulkhead deck of a passenger vessel or the

freeboard deck of a cargo vessel, is immersed only when the vessel heels more than 5°, the drainage of the enclosed cargo spaces may be by means of a sufficient number of scuppers discharging overboard. The installation of scuppers must comply with § 42.15–60 of this chapter.

* * * * *

(c)(1) Each bilge suction must lead from a manifold except as otherwise approved by the Commanding Officer, Marine Safety Center. As far as practicable, each manifold must be in, or be capable of remote operation from, the same space as the bilge pump that normally takes suction on that manifold. In either case, the manifold must be capable of being locally controlled from above the floorplates and must be easily accessible at all times. As far as practicable, each overboard-discharge valve for a bilge system must comply with the requirements governing location and accessibility for suction manifolds. Except as otherwise permitted by paragraph (c)(4) of this section for a vessel employing a common-rail bilge system, each bilge-manifold valve controlling a bilge suction from any compartment must be of the stop-check type.

(2) Each passenger vessel on an international voyage must have manifolds, where installed, and valves in the bilge-pumping system arranged so that, in case of flooding, one of the bilge pumps can take suction from any compartment and, further, so that damage to a pump or its piping connecting to the bilge main outboard of a line drawn at one-fifth of the beam of the vessel will not render the bilge system inoperative.

* * * * *

(4) A common-rail bilge system may be installed as an acceptable alternative to the system required by paragraph (c)(1) of this section, provided it satisfies all of the following criteria:

(i) The common-rail main runs inboard at least one-fifth of the beam of the vessel.

(ii) A stop-check valve or both a stop valve and a check valve are provided in each branch line and located inboard at least one-fifth of the beam of the vessel.

(iii) The stop valve or the stop-check valve is power-driven, is capable of remote operation from the space where the pump is, and, regardless of the status of the power system, is capable of manual operation to both open and close the valve.

(iv) The stop valve or the stop-check valve is accessible for both manual operation and repair under all operating conditions, and the space used for access contains no expansion joint or flexible coupling that, upon failure, would cause flooding and prevent access to the valve.

(v) A port and a starboard suction serve each space protected unless, under the worst conditions of list and trim and with liquid remaining after pumping, the vessel's stability remains acceptable, in accordance with subchapter S of this chapter.

(vi) For each vessel designed for the carriage of combinations of both liquid and dry bulk cargoes (O/B/O), no bilge pump or piping is located in a machinery space other than in a pump room for cargo, and no liquid and other cargoes are carried simultaneously.

(vii) For each cargo vessel in Great Lakes service, each common-rail piping for the bilge and ballast system serving cargo spaces, if installed and if connected to a dedicated common-rail bilge system, must lead separately from a valved manifold located at the pump.

* * * * *

(d) * * *

D=Molded depth (in feet) to the bulkhead deck.(6)

* * * * *

**Note 6**—For each passenger vessel constructed on or after June 9, 1995, and being on an international voyage, D must be measured to the next deck above the bulkhead deck if an enclosed cargo space on the bulkhead deck that is internally drained in accordance with paragraph (a)(4) of this section extends the entire length of the vessel. Where the enclosed cargo space extends a lesser length, D must be taken as the sum of the molded depth (in feet) to the bulkhead deck plus lh/L where l and h are the aggregate length and height (in feet) of the enclosed cargo space.

* * * * *

(h) Except as allowed by paragraph (c)(4)(vii) of this section, piping for draining a cargo hold or machinery space must be separate from piping used for filling or emptying any tank where water or oil is carried. Piping for bilge and ballast must be arranged so as to prevent, by the appropriate installation of stop and non-return valves, oil or water from the sea or ballast spaces from passing into a cargo hold or machinery space, or from passing from one compartment to another, regardless of the source. The bilge and ballast mains must be fitted with separate control valves at the pumps.

* * * * *

16. Section 56.50–55 is amended by revising paragraph (a) and Table 56.50–55(a) to read as follows:

**§ 56.50–55 Bilge pumps.**

(a) *Self-propelled vessels.* (1) Each self-propelled vessel must be provided with a power-driven pump or pumps connected to the bilge main as required by Table 56.50–55(a).

TABLE 56.50–55(a).—POWER BILGE PUMPS REQUIRED FOR SELF-PROPELLED VESSELS

| Vessel length, in feet | Passenger vessels [1] | | | Dry-cargo vessels [2] | | Tank vessels | Mobile offshore drilling units |
|---|---|---|---|---|---|---|---|
| | International voyages [3] | Ocean, coastwise and Great Lakes | All other waters | Ocean, coastwise and Great Lakes | All waters | All waters | All waters |
| 180′ or more | [4] 3 | [4] 3 | 2 | 2 | 2 | 2 | 2 |
| Below 180′ and exceeding 65′ | [4] 3 | [5] 2 | [5] 2 | [5] 2 | [5] 2 | 2 | 2 |
| 65′ or less | 3 | 1 | 1 | 1 | 1 | 1 | ..... |

[1] Small passenger vessels under 100 gross tons refer to Subpart 182.25 of Subchapter T (Small Passenger Vessel) of this chapter.

[2] Dry-bulk carriers having ballast pumps connected to the tanks outside the engineroom and to the cargo hold may substitute the appropriate requirements for tank vessels.

[3] Not applicable to passenger vessels which do not proceed more than 20 mile from the nearest land, or which are employed in the carriage of large numbers of unberthed passengers in special trades.

[4] When the criterion numeral exceeds 30, an additional independent power-driven pump is required. (See Part 171 of this chapter for determination of criterion numeral.)

[5] Vessels operating on lakes (including Great Lakes), bays, sounds, or rivers where steam is always available, or where a suitable water supply is available from a power-driven pump of adequate pressure and capacity, may substitute siphons or eductors for one of the required power-driven pumps, provided a siphon or eductor is permanently installed in each hold or compartment.

* * * * *

17. Section 56.50–60 is amended by revising paragraphs (b) and (l) and by adding paragraphs (d)(1) (i), (m), and (n) to read as follows:

**§ 56.50–60 Systems containing oil.**

* * * * *

(b) When oil needs to be heated to lower its viscosity, heating coils must be properly installed in each tank.

(1) Each drain from a heating coil as well as each drain from an oil heater must run to an open inspection tank or other suitable oil detector before returning to the feed system.

(2) As far as practicable, no part of the fuel-oil system containing heated oil under pressure exceeding 180 KPa (26 psi) may be placed in a concealed position so that defects and leakage cannot be readily observed. Each machinery space containing a part of the system must be adequately illuminated.

* * * * *

(d) * * *

(1) * * *

(i) In the special case of a deep tank in any shaft tunnel, piping tunnel, or similar space, one or more valves must be fitted on the tank, but control in the event of fire may be effected by means of an additional valve on the piping outside the tunnel or similar space. Any such additional valve installed inside a machinery space must be capable of being operated from outside this space.

(ii) [Reserved]

* * * * *

(l) Where oil piping passes through a non-oil tank without stop valves complying with paragraph (d) of this section installed at all tank penetrations, the piping must comply with § 56.50–50(k).

(m) Each arrangement for the storage, distribution, and use of oil in a pressure-lubrication system must—

(1) As well as comply with § 56.50–80, be such as to ensure the safety of the vessel and all persons aboard; and

(2) In a machinery space, meet the applicable requirements of §§ 56.50–60 (b)(2) and (d), 56.50–85(a)(11), 56.50–90 (c) and (d), and 58.01–55(f) of this subchapter. No arrangement need comply with § 58.50–90 (c)(1) and (c)(3) of this subchapter if the sounding pipe is fitted with an effective means of closure, such as a threaded cap or plug or other means acceptable to the Officer in Charge, Marine Inspection. The use of flexible piping or hose is permitted in accordance with the applicable requirements of §§ 56.35–10, 56.35–15, and 56.60–25(c).

(n) Each arrangement for the storage, distribution, and use of any other flammable oil employed under pressure in a power transmission-system, control and activating system, or heating system must be such as to ensure the safety of the vessel and all persons aboard by—

(1) Complying with Subpart 58.30 of this subchapter; and,

(2) Where means of ignition are present, meeting the applicable requirements of §§ 56.50–85(a)(11), 56.50–90 (c) and (d), and 58.01–55(f) of this subchapter. Each pipe and its valves and fittings must be of steel or other approved material, except that the use of flexible piping or hose is permitted in accordance with the applicable requirements of §§ 56.35–10, 56.35–15, and 56.60–25(c).

18. Section 56.50–65 is amended by revising its heading and paragraph (h) to read as follows:

**§ 56.50–65 Burner fuel-oil service systems.**

* * * * *

(h) Each fuel-oil service pump must be equipped with controls as required by § 58.01–25 of this subchapter.

19. Section 56.50–70 is amended by revising paragraph (j) to read as follows:

**§ 56.50–70 Gasoline fuel systems.**

* * * * *

(j) *Fuel pumps.* Each fuel pump must be equipped with controls as required by § 58.01–25 of this subchapter.

20. Section 56.50–80 is amended by revising its heading and paragraph (h) to read as follows:

**§ 56.50–80 Lubricating-oil systems.**

* * * * *

(h) Sight-flow glasses may be used in lubricating-oil systems provided it has been demonstrated, to the satisfaction of the Commanding Officer, Marine Safety Center, that they can withstand exposure to a flame at a temperature of 927°C (1700°F) for one hour, without failure or appreciable leakage.

* * * * *

21. Section 56.50–85 is amended by removing paragraphs (a)(7) (iii) and (iv), by redesignating paragraph (a)(7)(v) as (a)(7)(iii), and by revising the heading and paragraph (a)(7)(ii), newly redesignated paragraph (a)(7)(iii), and paragraph (a)(11) to read as follows:

**§ 56.50–85 Tank-vent piping.**

(a) * * *

(7) * * *

* * * * *

(ii) A hinged closure normally open on the outlet of the return bend, which must close automatically by the force of a submerging wave; or

(iii) Another suitable device acceptable to the Commanding Officer, Marine Safety Center.

* * * * *

(11)(i) If a tank may be filled by a pressure head exceeding that for which the tank is designed, the aggregate cross-sectional area of the vents in each tank must be not less than the cross-sectional area of the filling line unless the tank is protected by overflows, in which case the aggregate cross-sectional area of the overflows must be not less than the cross-sectional area of the filling line.

(ii) Provision must be made to guard against liquids rising in the venting system to a height that would exceed the design head of a cargo tank or fuel-oil tank. It may be made by high-level alarms or overflow-control systems or other, equivalent means, together with gauging devices and procedures for filling cargo tanks.

* * * * *

22. Section 56.50–90 is amended by revising paragraph (a), redesignating existing paragraphs (c) and (d) as paragraphs (e) and (f), and adding paragraphs (c) and (d) to read as follows:

**§ 56.50–90 Sounding devices.**

(a) Each tank must be provided with a suitable means of determining liquid level. Except for a main cargo tank on a tank vessel, each integral hull tank and compartment, unless at all times accessible while the vessel is operating, must be fitted with a sounding pipe.

* * * * *

(c) Except as allowed by this paragraph, on each vessel constructed on or after June 9, 1995, no sounding pipe used in a fuel-oil tank may terminate in any space where the risk of ignition of spillage from the pipe might arise. None may terminate in a space for passengers or crew. When practicable, none may terminate in a machinery space. When the Commanding Officer, Marine Safety Center, determines it impracticable to avoid terminating a pipe in a machinery space, a sounding pipe may terminate in a machinery space if all the following requirements are met:

(1) In addition to the sounding pipe, the fuel-oil tank has an oil-level gauge complying with paragraph (d) of this section.

(2) The pipe terminates in a place remote from ignition hazards unless precautions are taken such as fitting an effective screen (shield) to prevent the fuel oil, in case of spillage through the end of the pipe, from coming into contact with a source of ignition.

(3) The end of the pipe is fitted with a self-closing blanking device and a small-diameter, self-closing control cock located below the blanking device for the purpose of ascertaining before the blanking device is opened that no fuel

oil is present. Provision must be made to ensure that no spillage of fuel oil through the control cock involves an ignition hazard.

(d) On each vessel constructed on or after June 9, 1995, other oil-level gauges may be used instead of sounding pipes if all the following requirements are met:

(1) In a passenger vessel, no such gauge may require penetration below the top of the tank, and neither the failure of a gauge nor an overfilling of the tank may permit release of fuel into the space.

(2) In a cargo vessel, neither the failure of such a gauge nor an overfilling of the tank may permit release of fuel into the space. The use of cylindrical gauge-glasses is prohibited. The use of oil-level gauges with flat glasses and self-closing valves between the gauges and fuel tanks is acceptable.

* * * * *

23. Section 56.50–105 is amended by revising its heading and paragraphs (a)(5) and (b)(5) to read as follows:

**§ 56.50–105 Low-temperature piping.**

(a) * * *

(5) *Other requirements.* All other requirements of this part for Class I piping apply to Class I–L piping. Pressure testing must comply with subpart 56.97 of this part, and nondestructive testing of circumferentially welded joints must comply with § 56.95–10. Seamless tubular products must be used except that, when the service pressure does not exceed 1724 KPa (250 psi), the Commanding Officer, Marine Safety Center, may give special consideration to appropriate grades of piping and tubing that are welded without the addition of filler metal in the root pass. Each production procedure and quality-control program for welded products must be acceptable to the Officer in Charge, Marine Inspection.

(b) * * *

(5) Pressure testing must comply with Subpart 56.97, and nondestructive testing of welded joints must comply with § 56.95–10.

* * * * *

24. Section 56.60–25 is amended by revising paragraphs (a)(3) and (b)(1) and by adding paragraph (a)(11) to read as follows:

**§ 56.60–25 Nonmetallic materials.**

(a) * * *

(3) No use of plastic piping within a concealed space in an accommodation or service area is permitted unless—

(i) Each trunk or duct containing such piping is completely surrounded by ''A'' class divisions; or

(ii) An approved smoke-detection system is fitted in the concealed space, and each penetration of a bulkhead or deck, and each installation of a draft stop, is made in accordance with paragraph (a)(2) of this section to maintain the integrity of fire divisions.

* * * * *

(11) Plastic piping intended for an accommodation area, a service area, or a control station must comply with the standard for the spread of flame or smoke established by Commandant (G–MTH).

(b) * * *

(1) Vital machinery served by plastic piping must be duplicated by equivalent machinery served entirely by conventional metallic piping unless allowed otherwise by this section. When such machinery is in separate watertight compartments, or is located or insulated so that damage to both by a single localized fire is unlikely, both may be fitted with plastic piping. (The Marine Inspector will make the final determination as to the adequacy of the separation between duplicate machinery installed in the same watertight compartment.) In no case may failure of plastic piping on one set of machinery affect the operation of the other machinery. Alternatively, a single set of machinery may be installed with parallel, but independent, piping systems, one of plastic and the other of metallic materials. Where metallic piping is required to duplicate or parallel plastic piping, failure of the plastic piping must not interfere with the proper operation of the metallic piping or of the machinery it serves.

* * * * *

## PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

25. The authority citation for part 58 is revised to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

26. Section 58.01–10 is revised to read as follows:

**§ 58.01–10 Fuel oil.**

(a) The following limits apply to the use of oil as fuel:

(1) Except as otherwise permitted by this section, no fuel oil with a flashpoint of less than 60°C (140°F) may be used.

(2) Except as otherwise permitted by § 58.50–1(b), fuel oil with a flashpoint of not less than 43°C (110°F) may be used in emergency generators.

(3) Subject to such additional precautions as the Commanding Officer, Marine Safety Center, considers necessary, and provided that the ambient temperature of the space in which such fuel oil is stored or used does not rise to within 10°C (50°F) below the flashpoint of the fuel oil, fuel oil having a flashpoint of less than 60°C (140°F) but not less than 43°C (110°F) may be used in general.

(4) In a cargo vessel, fuel having a lower flashpoint than otherwise specified in this section—for example, crude oil—may be used provided that such fuel is not stored in any machinery space and that the Commanding Officer, Marine Safety Center, approves the complete installation.

(b) The flashpoint of oil must be determined by the Pensky-Martens Closed Tester, ASTM–D93–80.

**§ 58.01–15 [Removed]**

27. Section 58.01–15 is removed.

28. Section 58.01–25 is revised to read as follows:

**§ 58.01–25 Means of stopping machinery.**

Machinery driving forced-draft and induced-draft fans, fuel-oil transfer pumps, fuel-oil unit and service pumps, and similar fuel-oil pumps must be fitted with remote controls from a readily accessible position outside the space concerned so that the fans or pumps may be stopped in case of fire in the compartment in which they are located. The controls must be suitably protected against accidental operation and against tampering and must be suitably marked.

29. Sections 58.01–40, 58.01–45, 58.01–50, and 58.01–55 are added to read as follows:

**§ 58.01–40 Machinery, angles of inclination.**

(a) Propulsion machinery and all auxiliary machinery essential to the propulsion and safety of the vessel must be designed to operate when the vessel is upright, when the vessel is inclined under static conditions at any angle of list up to and including 15°, and when the vessel is inclined under dynamic conditions (rolling) at any angle of list up to and including 22.5° and, simultaneously, at any angle of trim (pitching) up to and including 7.5° by bow or stern.

(b) Deviations from these angles of inclination may be permitted by the Commanding Officer, Marine Safety Center, considering the type, size, and service of the vessel.

**§ 58.01–45 Machinery space, ventilation.**

Each machinery space must be ventilated to ensure that, when machinery or boilers are operating at full power in all weather including heavy weather, an adequate supply of air is maintained for the operation of the

machinery and for the safety, efficiency, and comfort of the crew.

**§ 58.01–50 Machinery space, noise.**

(a) Each machinery space must be designed to minimize the exposure of personnel to noise in accordance with IMO Assembly Resolution A.468(XII), Code on Noise Levels on Board Ships, 1981. No person may encounter a 24-hour effective noise level greater than 82 dB(A) when noise is measured using a sound-level meter and an A-weighting filter.

(b) Except as allowed by paragraph (c) of this section, no machinery space may exceed the following noise levels:

(1) Machinery control room—75 dB(A)
(2) Manned machinery space—90 dB(A)
(3) Unmanned machinery space—110 dB(A)
(4) Periodically unattended machinery space—110 dB(A)
(5) Workshop—85 dB(A)
(6) Any other work space around machinery—90 dB(A)

(c) If adding a source of noise would cause a machinery space to exceed the noise level permitted by paragraph (b) of this section, the new source must be suitably insulated or isolated so that the space does not exceed that noise level. If the space is manned, a refuge from noise must be provided within the space.

(d) Ear protection must be provided for any person entering any space with a noise level greater than 85 dB(A).

(e) Each entrance to a machinery space with a noise level greater than 85 dB(A) must have a warning sign stating that each person entering the space must wear ear protection.

**§ 58.01–55 Tanks for flammable and combustible oil.**

(a) For the purposes of this section, a machinery space of category A is a space that contains any of the following:

(1) Internal-combustion machinery used for main propulsion.

(2) Internal-combustion machinery used for other than main propulsion, whose power output is equal to or greater than 500 HP (375 kw).

(3) Any oil-fired boiler.

(4) Any equipment used to prepare fuel oil for delivery to an oil-fired boiler, or equipment used to prepare heated oil for delivery to an internal-combustion engine, including any oil-pressure pumps, filters, and heaters dealing with oil pressures above 26 psi.

(b) As far as practicable, each fuel-oil tank must be part of the vessel's structure and be located outside a machinery space of category A.

(c) If a fuel-oil tank, other than a double-bottom tank, must be located adjacent to or within a machinery space of category A—

(1) At least one of its vertical sides must be contiguous to the boundary of the machinery space;

(2) The tank must have a common boundary with the double-bottom tanks; and

(3) The area of the tank boundary common with the machinery spaces must be kept as small as practicable.

(d) If a fuel-oil tank must be located within a machinery space of category A, it must not contain fuel oil with a flashpoint of less than 60°C (140°F).

(e) In general, no freestanding fuel-oil tank is permitted in any machinery space of Category A on a passenger vessel. A freestanding fuel-oil tank is permitted in other spaces only if authorized by the Commanding Officer, Marine Safety Center. If so authorized, each freestanding fuel-oil tank must—

(i) Comply with Subpart 58.50 of this subchapter; and

(ii) Be placed in an oil-tight spill tray with a drain pipe leading to a spill-oil tank.

(f) No fuel-oil tank may be located where spillage or leakage from it can constitute a hazard by falling on heated surfaces. The design must also prevent any oil that may escape under pressure from any pump, filter, or heater from coming into contact with heated surfaces.

**§ 58.03–1 [Amended]**

30. Section 58.03–1(b) is amended by adding, in alphabetical order, two publications of the International Maritime Organization to read as follows:

* * * * *

(b) * * *

International Maritime Organization (IMO) 4 Albert Embankment, London SE1 7SR, England

A.467(XII), Guidelines for Acceptance of Non-Duplicated Rudder Actuators for Tankers, Chemical Tankers and Gas Carriers of 10,000 Tons Gross Tonnage and Above But Less Than 100,000 Tonnes Deadweight, 1981—58.25–60

A.468(XII), Code on Noise Levels on Board Ships, 1981—58.01–50

* * * * *

## Subpart 58.05—Main Propulsion Machinery

31–32. Subpart 58.05 is amended by revising paragraph (a) of § 58.05–1 and adding § 58.05–10 to read as follows:

**§ 58.05–1 Material, design, and construction.**

(a) The material, design, construction, workmanship, and arrangement of main propulsion machinery and of each auxiliary, directly connected to the engine and supplied as such, must be at least equivalent to the standards established by the American Bureau of Shipping or other recognized classification society, except as otherwise provided by this subchapter.

* * * * *

**§ 58.05–10 Automatic shut-off.**

Main propulsion machinery must be provided with automatic shut-off controls in accordance with part 62 of this subchapter. These controls must shut down main propulsion machinery in case of a failure, such as failure of the lubricating-oil supply, that could lead rapidly to complete breakdown, serious damage, or explosion.

**§ 58.10–15 [Amended]**

33. Section 58.10–15 is amended by removing paragraph (e) and by redesignating paragraphs (f), (g), (h), (i), and (j), respectively, as (e), (f), (g), (h), and (i).

34. Subpart 58.25 is revised to read as follows:

**Subpart 58.25—Steering Gear**

Sec.
58.25–1 Applicability.
58.25–5 General.
58.25–10 Main and auxiliary steering gear.
58.25–15 Voice communications.
58.25–20 Piping for steering gear.
58.25–25 Indicating and alarm systems.
58.25–30 Automatic restart.
58.25–35 Helm arrangements.
58.25–40 Arrangement of the steering-gear compartment.
58.25–45 Buffers.
58.25–50 Rudder stops.
58.25–55 Overcurrent protection for steering-gear systems.
58.25–60 Non-duplicated hydraulic rudder actuators.
58.25–65 Feeder circuits.
58.25–70 Steering-gear control systems.
58.25–75 Materials.
58.25–80 Automatic pilots and ancillary steering gear.
58.25–85 Special requirements for tank vessels.

## Subpart 58.25—Steering Gear

**§ 58.25–1 Applicability.**

(a) Except as specified otherwise, this subpart applies to—

(1) Each vessel or installation of steering gear contracted for on or after June 9, 1995; and

(2) Each vessel on an international voyage with an installation of steering gear contracted for on or after September 1, 1984.

(b) Each vessel not on an international voyage with an installation of steering gear contracted for before June 9, 1995, and each vessel on an international voyage with such an installation

contracted for before September 1, 1984, may meet either the requirements of this subpart or those in effect on the date of the installation.

**§ 58.25–5 General.**

(a) Definitions.

*Ancillary steering equipment* means steering equipment, other than the required control systems and power actuating systems, that either is not required, such as automatic pilot or non-followup control from the pilothouse, or is necessary to perform a specific required function, such as the automatic detection and isolation of a defective section of a tanker's hydraulic steering gear.

*Auxiliary steering gear* means the equipment, other than any part of the main steering gear, necessary to steer the vessel in case of failure of the main steering gear, not including a tiller, quadrant, or other component serving the same purpose. Control system means the equipment by which orders for rudder movement are transmitted from the pilothouse to the steering-gear power units. A control system for steering gear includes, but is not limited to, one or more—

(1) Transmitters;

(2) Receivers;

(3) Feedback devices;

(4) Hydraulic servo-control pumps, with associated motors and motor controllers;

(5) Differential units, hunting gear, and similar devices;

(6) All gearing, piping, shafting, cables, circuitry, and ancillary devices for controlling the output of power units; and

(7) Means of bringing steering-gear power units into operation.

*Fast-acting valve*, as used in this subpart, means a ball, plug, spool, or similar valve with a handle connected for quick manual operation.

*Followup control* means closed-loop (feedback) control that relates the position of the helm to a specific rudder angle by transmitting the helm-angle order to the power actuating system and, by means of feedback, automatically stopping the rudder when the angle selected by the helm is reached.

*Main steering gear* means the machinery, including power actuating systems, and the means of applying torque to the rudder stock, such as a tiller or quadrant, necessary for moving the rudder to steer the vessel in normal service.

*Maximum ahead service speed* means the greatest speed that a vessel is designed to maintain in service at sea at the deepest loadline draft.

*Maximum astern speed* means the speed that it is estimated the vessel can attain at the maximum designed power astern at the deepest loadline draft.

*Power actuating system* means the hydraulic equipment for applying torque to the rudder stock. It includes, but is not limited to—

(1) Rudder actuators;

(2) Steering-gear power units; and

(3) Pipes, valves, fittings, linkages, and cables for transmitting power from the power unit or units to the rudder actuator or actuators.

*Speedily regained*, as used in this subpart, refers to the time it takes one qualified crewmember, after arriving in the steering-gear compartment, and without the use of tools, to respond to a failure of the steering gear and take the necessary corrective action.

*Steering capability* means steering equivalent to that required of auxiliary steering gear by § 58.25–10(c)(2).

*Steering gear* means the machinery, including power actuating systems, control systems, and ancillary equipment, necessary for moving the rudder to steer the vessel.

*Steering-gear power* unit means:

(1) In the case of electric steering gear, an electric motor and its associated electrical equipment, including motor controller, disconnect switch, and feeder circuit.

(2) In the case of an electro-hydraulic steering gear, an electric motor, connected pump, and associated electrical equipment such as the motor controller, disconnect switch, and feeder circuit.

(3) In the case of hydraulic steering gear, the pump and its prime mover.

*Tank vessel*, as used in this subpart, means a self-propelled vessel, including a chemical tanker or a gas carrier, defined either as a tanker by 46 U.S.C. 2101(38) or as a tank vessel by 46 U.S.C. 2101(39).

(b) Unless it otherwise complies with this subpart, each self-propelled vessel must be provided with a main steering gear and an auxiliary steering gear. These gear must be arranged so that—

(1) The failure of one will not render the other inoperative; and

(2) Transfer from the main to the auxiliary can be effected quickly.

(c) Each substantial replacement of steering-gear components or reconfiguration of steering-gear arrangements on an existing vessel must comply with the requirements of this subpart for new installations to the satisfaction of the cognizant Officer in Charge, Marine Inspection.

(d) Each non-pressure-containing steering-gear component and each rudder stock must be of sound and reliable construction, meet the minimum material requirements of § 58.25–75, and be designed to standards at least equal to those established by the American Bureau of Shipping or other recognized classification society.

(e) The suitability of any essential steering-gear component not duplicated must be specifically approved by the Commanding Officer, Marine Safety Center. Where a steering-gear component is shared by—

(1) A control system (e.g., a control-system transfer switch located in the steering-gear compartment);

(2) The main and auxiliary steering gear (e.g., an isolation valve); or

(3) A power actuating system and its control system (e.g., a directional control valve)—the requirements for both systems apply, to provide the safest and most reliable arrangement.

(f) Steering gear must be separate and independent of all other shipboard systems, except—

(1) Electrical switchboards from which they are powered;

(2) Automatic pilots and similar navigational equipment; and

(3) Propulsion machinery for an integrated system of propulsion and steering.

(g) Except on a vessel with an integrated system of propulsion and steering, no thruster may count as part of a vessel's required steering capability.

(h) Except for a tank vessel subject to § 58.25–85(e), each oceangoing vessel required to have power-operated steering gear must be provided with arrangements for steadying the rudder both in an emergency and during a shift from one steering gear to another. On hydraulic steering gear, a suitable arrangement of stop valves in the main piping is an acceptable means of steadying the rudder.

(i) General arrangement plans for the main and auxiliary steering gear and their piping must be submitted for approval in accordance with subpart 50.20 of this subchapter.

**§ 58.25–10 Main and auxiliary steering gear.**

(a) Power-operated main and auxiliary steering gear must be separate systems that are independent throughout their length. Other systems and arrangements of steering gear will be acceptable if the Commanding Officer, Marine Safety Center, determines that they comply with, or exceed the requirements of, this subpart.

(b) The main steering gear and rudder stock must be—

(1) Of adequate strength for and capable of steering the vessel at

maximum ahead service speed, which must be demonstrated to the satisfaction of the cognizant Officer in Charge, Marine Inspection;

(2) Capable of moving the rudder from 35° on either side to 35° on the other with the vessel at its deepest loadline draft and running at maximum ahead service speed, and from 35° on either side to 30° on the other in not more than 28 seconds under the same conditions;

(3) Operated by power when necessary to comply with paragraph (b)(2) of this section or when the diameter of the rudder stock is over 12 centimeters (4.7 inches) in way of the tiller, excluding strengthening for navigation in ice; and

(4) Designed so that they will not be damaged when operating at maximum astern speed; however, this requirement need not be proved by trials at maximum astern speed and maximum rudder angle.

(c) The auxiliary steering gear must be—

(1) Of adequate strength for and capable of steering the vessel at navigable speed and of being brought speedily into action in an emergency;

(2) Capable of moving the rudder from 15° on either side to 15° on the other in not more than 60 seconds with the vessel at its deepest loadline draft and running at one-half maximum ahead service speed or 7 knots, whichever is greater; and

(3) Operated by power when necessary to comply with paragraph (c)(2) of this section or when the diameter of the rudder stock is over 23 centimeters (9 inches) in way of the tiller, excluding strengthening for navigation in ice.

(d) No auxiliary means of steering is required on a double-ended ferryboat with independent main steering gear fitted at each end of the vessel.

(e) When the main steering gear includes two or more identical power units, no auxiliary steering gear need be fitted, if—

(1) In a passenger vessel, the main steering gear is capable of moving the rudder as required by paragraph (b)(2) of this section while any one of the power units is not operating;

(2) In a cargo vessel, the main steering gear is capable of moving the rudder as required by paragraph (b)(2) of this section while all the power units are operating;

(3) In a vessel with an installation completed on or after September 1, 1984, and on an international voyage, and in any other vessel with an installation completed after June 9, 1995, the main steering gear is arranged so that, after a single failure in its piping system (if hydraulic), or in one of the power units, the defect can be isolated so that steering capability can be maintained or speedily regained in less than ten minutes; or

(4) In a vessel with an installation completed before September 1, 1986, and on an international voyage, with steering gear not complying with paragraph (e)(3) of this section, the installed steering gear has a proved record of reliability and is in good repair.

**Note.**—The place where isolation valves join the piping system, as by a flange, constitutes a single-failure point. The valve itself need not constitute a single-failure point if it has a double seal to prevent substantial loss of fluid under pressure. Means to purge air that enters the system as a result of the piping failure must be provided, if necessary, so that steering capability can be maintained or speedily regained in less than ten minutes.

(f) In each vessel of 70,000 gross tons or over, the main steering gear must have two or more identical power units complying with paragraph (e) of this section.

### § 58.25–15 Voice communications.

Each vessel must be provided with a sound-powered telephone system, complying with subpart 113.30 of this chapter, to communicate between the pilothouse and the steering-gear compartment, unless an alternative means of communication between them has been approved by the Commanding Officer, Marine Safety Center.

### § 58.25–20 Piping for steering gear.

(a) Pressure piping must comply with subpart 58.30 of this part.

(b) Relief valves must be fitted in any part of a hydraulic system that can be isolated and in which pressure can be generated from the power units or from external forces such as wave action. The valves must be of adequate size, and must be set to limit the maximum pressure to which the system may be exposed, in accordance with § 56.07–10(b) of this subchapter.

(c) Each hydraulic system must be provided with—

(1) Arrangements to maintain the cleanliness of the hydraulic fluid, appropriate to the type and design of the hydraulic system; and

(2) For a vessel on an ocean, coastwise, or Great Lakes voyage, a fixed storage tank having sufficient capacity to recharge at least one power actuating system including the reservoir. The storage tank must be permanently connected by piping so that the hydraulic system can be readily recharged from within the steering-gear compartment and must be fitted with a device to indicate liquid level that complies with § 56.50–90 of this subchapter.

(d) Neither a split flange nor a flareless fitting of the grip or bite type, addressed by § 56.30–25 of this subchapter, may be used in hydraulic piping for steering gear.

### § 58.25–25 Indicating and alarm systems.

(a) Indication of the rudder angle must be provided both at the main steering station in the pilothouse and in the steering-gear compartment. The rudder-angle indicator must be independent of control systems for steering gear.

(b) Each electric-type rudder-angle indicator must comply with § 113.40–10 of this chapter and, in accordance with § 112.15–5(h) of this chapter, draw its power from the source of emergency power.

(c) On each vessel of 1,600 gross tons or over, a steering-failure alarm must be provided in the pilothouse in accordance with §§ 113.43–3 and 113.43–5 of this chapter.

(d) An audible and a visible alarm must activate in the pilothouse upon—

(1) Failure of the electric power to the control system of any steering gear;

(2) Failure of that power to the power unit of any steering gear; or

(3) Occurrence of a low oil level in any oil reservoir of a hydraulic, power-operated steering-gear system.

(e) An audible and a visible alarm must activate in the machinery space upon—

(1) Failure of any phase of a three-phase power supply;

(2) Overload of any motor described by § 58.25–55(c); or

(3) Occurrence of a low oil level in any oil reservoir of a hydraulic, power-operated steering-gear system.

**Note.**—See § 62.50–30(f) of this subchapter regarding extension of alarms to the navigating bridge on vessels with periodically unattended machinery spaces.

(f) Each power motor for the main and auxiliary steering gear must have a ''motor running'' indicator light in the pilothouse, and in the machinery space, that activates when the motor is energized.

### § 58.25–30 Automatic restart.

Each control system for main and auxiliary steering gear and each power actuating system must restart automatically when electrical power is restored after it has failed.

### § 58.25–35 Helm arrangements.

(a) The arrangement of each steering station, other than in the steering-gear

compartment, must be such that the helmsman is abaft the wheel. The rim of the wheel must be plainly marked with arrows and lettering for right and left rudder, or a suitable notice indicating these directions must be posted directly in the helmsman's line of sight.

(b) Each steering wheel must turn clockwise for ''right rudder'' and counterclockwise for ''left rudder.'' When the vessel is running ahead, after clockwise movement of the wheel the vessel's heading must change to the right.

(c) If a lever-type control is provided, it must be installed and marked so that its movement clearly indicates both the direction of the rudder's movement and, if followup control is also provided, the amount of the rudder's movement.

(d) Markings in the pilothouse must not interfere with the helmsman's vision, but must be clearly visible at night.

**Note.**—See § 113.40–10 of this chapter for the arrangement of rudder-angle indicators at steering stations.

**§ 58.25–40 Arrangement of the steering-gear compartment.**

(a) The steering-gear compartment must—

(1) Be readily accessible and, as far as practicable, separated from any machinery space;

(2) Ensure working access to machinery and controls in the compartment; and

(3) Include handrails and either gratings or other non-slip surfaces to ensure a safe working environment if hydraulic fluid leaks.

**Note.**—Where practicable, all steering gear should be located in the steering-gear compartment.

(b) [Reserved]

**§ 58.25–45 Buffers.**

For each vessel on an ocean, coastwise, or Great Lakes voyage, steering gear other than hydraulic must be designed with suitable buffering arrangements to relieve the gear from shocks to the rudder.

**§ 58.25–50 Rudder stops.**

(a) Power-operated steering gear must have arrangements for cutting off power to the gear before the rudder reaches the stops. These arrangements must be synchronized with the rudder stock or with the gear itself rather than be within the control system for the steering gear, and must work by limit switches that interrupt output of the control system or by other means acceptable to the Commanding Officer, Marine Safety Center.

(b) Strong and effective structural rudder stops must be fitted; except that, where adequate positive stops are provided within the steering gear, such structural stops need not be fitted.

**§ 58.25–55 Overcurrent protection for steering-gear systems.**

(a) Each feeder circuit for steering must be protected by a circuit breaker on the switchboard that supplies it and must have an instantaneous trip set at a current of at least—

(1) 300% and not more than 375% of the rated full-load current of one steering-gear motor for a direct-current motor; or

(2) 175% and not more than 200% of the locked-rotor current of one steering-gear motor for an alternating-current motor.

(b) No feeder circuit for steering may have any overcurrent protection, except that required by paragraph (a) of this section.

(c) Neither a main or an auxiliary steering-gear motor, nor a motor for a steering-gear control system, may be protected by an overload protective device. The motor must have a device that activates an audible and a visible alarm at the main machinery-control station if there is an overload that would cause overheating of the motor.

(d) No control circuit of a motor controller, steering-gear control system, or indicating or alarm system may have overcurrent protection except short-circuit protection that is instantaneous and rated at 400% to 500% of—

(1) The current-carrying capacity of the conductor; or

(2) The normal load of the system.

(e) The short-circuit protective device for each steering-gear control system must be in the steering-gear compartment and in the control circuit immediately following the disconnect switch for the system.

(f) When, in a vessel of less than 1,600 gross tons, an auxiliary steering gear, which § 58.25–10(c)(3) requires to be operated by power, is not operated by electric power or is operated by an electric motor primarily intended for other service, the main steering gear may be fed by one circuit from the main switchboard. When such an electric motor is arranged to operate an auxiliary steering gear, neither § 58.25–25(e) nor paragraphs (a) through (c) of this section need be complied with if both the overcurrent protection and compliance with §§ 58.25–25(d), 58.25–30, and 58.25–70 (j) and (k) satisfy the Commanding Officer, Marine Safety Center.

**§ 58.25–60 Non-duplicated hydraulic rudder actuators.**

Non-duplicated hydraulic rudder actuators may be installed in the steering-gear control systems on each vessel of less than 100,000 deadweight tons. These actuators must meet IMO Assembly Resolution A.467(XII), Guidelines for Acceptance of Non-Duplicated Rudder Actuators for Tankers, Chemical Tankers, and Gas Carriers of 10,000 Tons Gross Tonnage and Above But Less Than 100,000 Tonnes Deadweight, 1981, and be acceptable to the Commanding Officer, Marine Safety Center. Also, the piping for the main gear must comply with § 58.25–10(e)(3).

**§ 58.25–65 Feeder circuits.**

(a) Each vessel with one or more electric-driven steering-gear power units must have at least two feeder circuits, which must be separated as widely as practicable. One or more of these circuits must be supplied from the vessel's service switchboard. On a vessel where the rudder stock is over 23 centimeters (9 inches) in diameter in way of the tiller, excluding strengthening for navigation in ice, and where a final source of emergency power is required by § 112.05–5(a) of this chapter, one or more of these circuits must be supplied from the emergency switchboard, or from an alternative source of power that—

(1) Is available automatically within 45 seconds of loss of power from the vessel's service switchboard;

(2) Comes from an independent source of power in the steering-gear compartment;

(3) Is used for no other purpose; and

(4) Has a capacity for one half-hour of continuous operation, to move the rudder from 15° on either side to 15° on the other in not more than 60 seconds with the vessel at its deepest loadline draft and running at one-half maximum ahead service speed or 7 knots, whichever is greater.

(b) Each vessel that has a steering gear with multiple electric-driven power units must be arranged so that each power unit is supplied by a separate feeder.

(c) Each feeder circuit must have a disconnect switch in the steering-gear compartment.

(d) Each feeder circuit must have a current-carrying capacity of—

(1) 125% of the rated full-load current rating of the electric steering-gear motor or power unit; and

(2) 100% of the normal current of one steering-gear control system including all associated motors.

**§ 58.25–70 Steering-gear control systems.**

(a) Each power-driven steering-gear system must be provided with at least one steering-gear control system.

(b) The main steering gear must be operable from the pilothouse by mechanical, hydraulic, electrical, or other means acceptable to the Commanding Officer, Marine Safety Center. This gear and its components must give full followup control of the rudder. Supplementary steering-gear control not giving full followup may also be provided from the pilothouse.

(c) Each steering-gear control system must have in the pilothouse a switch arranged so that one operation of the switch's lever automatically supplies power to a complete system and its associated power unit or units. This switch must be—

(1) Operated by one lever;

(2) Arranged so that not more than one control system and its associated power unit or units can be energized from the pilothouse at any one time;

(3) Arranged so that the lever passes through ''off'' during transfer of control from one control system to another; and

(4) Arranged so that the switches for each control system are in separate enclosures or are separated by fire-resistant barriers.

(d) Each steering-gear control system must receive its power from—

(1) The feeder circuit supplying power to its steering-gear power unit or units in the steering-gear compartment; or

(2) A direct connection to the busbars supplying the circuit for its steering-gear power unit or units from a point on the switchboard adjacent to that supply.

(e) Each steering-gear control system must have a switch that—

(1) Is in the steering-gear compartment; and

(2) Disconnects the system from its power source and from the steering gear that the system serves.

(f) Each motor controller for a steering gear must be in the steering-gear compartment.

(g) A means of starting and stopping each motor for a steering gear must be in the steering-gear compartment.

(h) When the main steering gear is arranged in accordance with § 58.25–10(e), two separate and independent systems for full followup control must be provided in the pilothouse; except that—

(1) The steering wheel or lever need not be duplicated; and

(2) If the system consists of a hydraulic telemotor, no second separate and independent system need be provided other than on each tank vessel subject to § 58.25–85.

(i) When only the main steering gear is power-driven, two separate and independent systems for full followup control must be provided in the pilothouse; except that the steering wheel or lever need not be duplicated.

(j) When the auxiliary steering gear is power-driven, a control system for the auxiliary steering gear must be provided in the pilothouse that is separate and independent from the control system for the main steering gear; except that the steering wheel or lever need not be duplicated.

(k) On a vessel of 500 gross tons or above, each main steering gear and auxiliary steering gear must be arranged so that its power unit or units are operable by controls from the steering-gear compartment. These controls must not be rendered inoperable by failure of the controls in the pilothouse.

**§ 58.25–75 Materials.**

(a) Materials used for the mechanical or hydraulic transmission of power to the rudder stock must have an elongation of at least 15% in 5 centimeters (2 inches); otherwise, components used for this purpose must be shock-tested in accordance with subpart 58.30 of this part.

(b) No materials with low melting-points, including such materials as aluminum and nonmetallic seals, may be used in control systems for steering gear or in power actuating systems unless—

(1) The materials are within a compartment having little or no risk of fire;

(2) Because of redundancy in the system, damage by fire to any component would not prevent immediate restoration of steering capability; or

(3) The materials are within a steering-gear power actuating system.

**§ 58.25–80 Automatic pilots and ancillary steering gear.**

(a) Automatic pilots and ancillary steering gear, and steering-gear control systems, must be arranged to allow immediate resumption of manual operation of the steering-gear control system required in the pilothouse. A switch must be provided, at the primary steering position in the pilothouse, to completely disconnect the automatic equipment from the steering-gear controls.

(b) Automatic pilots and ancillary steering gear must be arranged so that no single failure affects proper operation and independence of the main or auxiliary steering gear, required controls, rudder-angle indicators, or steering-failure alarm.

**§ 58.25–85 Special requirements for tank vessels.**

(a) Each tank vessel must meet the applicable requirements of §§ 58.25–1 through 58.25–80.

(b) On each tank vessel of 10,000 gross tons or over, the main steering gear must comprise two or more identical power units that comply with § 58.25–10(e)(2).

(c) Each tank vessel of 10,000 gross tons or over constructed on or after September 1, 1984, must comply with the following:

(1) The main steering gear must be arranged so that, in case of loss of steering capability due to a single failure in any part of the power actuating system of the main steering gear, excluding seizure of a rudder actuator or failure of the tiller, quadrant, or components serving the same purpose, steering capability can be regained not more than 45 seconds after the loss of one power actuating system.

(2) The main steering gear must include either—

(i) Two separate and independent power actuating systems, complying with § 58.25–10(b)(2); or

(ii) At least two identical hydraulic-power actuating systems, which, acting simultaneously in normal operation, must comply with § 58.25–10(b)(2). (When they must so comply, these systems must be connected. Loss of hydraulic fluid from one system must be capable of being detected, and the defective system automatically isolated, so the other system or systems remain fully operational.)

(3) Steering gear other than hydraulic must meet equivalent standards to the satisfaction of the Commanding Officer, Marine Safety Center.

(d) On each tank vessel of 10,000 gross tons or over, but less than 100,000 deadweight tons, the main steering gear need not comply with paragraph (c) of this section if the rudder actuator or actuators installed are non-duplicated hydraulic and if—

(1) The actuators comply with § 58.25–60; and

(2) In case of loss of steering capability due to a single failure either of any part of the piping systems or in one of the power units, steering capability can be regained in not more than 45 seconds.

(e) On each tank vessel of less than 70,000 deadweight tons, constructed before, and with a steering-gear installation before, September 1, 1986, and on an international voyage, the steering gear not complying with paragraph (c) (1), (2), or (3) of this section, as applicable, may continue in service if the steering gear has a proved

record of reliability and is in good repair.

(f) Each tank vessel of 10,000 gross tons or over, constructed before, and with a steering-gear installation before, September 1, 1984, must—

(1) Meet the applicable requirements in §§ 58.25–15, 58.25–20(c), 58.25–25 (a), (d), and (e), and 58.25–70 (e), (h), (i), and (j);

(2) Ensure working access to machinery and controls in the steering-gear compartment (which must include handrails and either gratings or other non-slip surfaces to ensure a safe working environment in case hydraulic fluid leaks);

(3) Have two separate and independent steering-gear control systems, each of which can be operated from the pilothouse; except that it need not have separate steering wheels or steering levers;

(4) Arrange each system required by paragraph (f)(3) of this section so that, if the one in operation fails, the other can be operated from the pilothouse immediately; and

(5) Supply each system required by paragraph (f)(3) of this section, if electric, with power by a circuit that is—

(i) Used for no other purpose; and either—

(ii) Connected in the steering-gear compartment to the circuit supplying power to the power unit or units operated by that system; or

(iii) Connected directly to the busbars supplying the circuit for its steering-gear power unit or units at a point on the switchboard adjacent to that supply.

(g) Each tank vessel of 40,000 gross tons or over, constructed before, and with a steering-gear installation before, September 1, 1984, and on an international voyage, must have the steering gear arranged so that, in case of a single failure of the piping or of one of the power units, either steering capability equivalent to that required of the auxiliary steering gear by § 58.25–10(c)(2) can be maintained or the rudder's movement can be limited so that steering capability can be speedily regained in less than 10 minutes. This arrangement must be achieved by—

(1) An independent means of restraining the rudder;

(2) Fast-acting valves that may be manually operated to isolate the actuator or actuators from the external hydraulic piping, together with a means of directly refilling the actuators by a fixed, independent, power-operated pump and piping; or

(3) An arrangement such that, if hydraulic-power actuating systems are connected, loss of hydraulic fluid from one system must be detected and the defective system isolated either automatically or from within the pilothouse so that the other system remains fully operational.

**Note.**—The term ''piping or * * * one of the power units'' in paragraph (g) of this section refers to the pressure-containing components in hydraulic or electro-hydraulic steering gear. It does not include rudder actuators or hydraulic-control servo piping and pumps used to stroke the pump or valves of the power unit, unless their failure would result in failure of the unit or of the piping to the actuator.

35. Section 58.30–5 is amended by adding paragraph (d) to read as follows:

**§ 58.30–5 Design requirements.**

* * * * *

(d) Each pneumatic system must minimize the entry of oil into the system and must drain the system of liquids.

## PART 61—PERIODIC TESTS AND INSPECTIONS

36. The authority citation for part 61 is revised to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

37. Section 61.05–10 is amended by revising paragraphs (a) and (b), removing current Table 61.05–10, and adding new Table 61.05–10 after current paragraph (g) to read as follows:

**§ 61.05–10 Boilers in service.**

(a) Each boiler, including superheater, reheater, economizer, auxiliary boiler, low-pressure heating boiler, and unfired steam boiler, must be available for examination by the marine inspector at intervals specified by Table 61.05–10, and more often if necessary, to determine that the complete unit is in a safe and satisfactory condition. When a hydrostatic test is required, the marine inspector may examine all accessible parts of the boiler while it is under pressure.

(b) The owner, master, or person in charge of the vessel shall give ample notice to the cognizant Officer in Charge, Marine Inspection, so that a marine inspector may witness the tests and make the required inspections.

* * * * *

TABLE 61.05–10.—INSPECTION INTERVALS FOR BOILERS [1 2 3]

| | Firetube boiler ≥ 150 psi | Watertube boiler | Any firetube boiler for propulsion | Firetube boiler < 150 psi |
|---|---|---|---|---|
| Hydro Test: | | | | |
| Passenger Vessel | 2.5 | 2.5 | 1 | 2.5 |
| Other Vessel | 2.5 | 5 | 1 | 5 |
| Fireside Inspection | 1 | 2.5 | 1 | 2.5 |
| Waterside Inspection | 1 | 2.5 | 1 | 2.5 |
| Boiler Safety-Valve Test | 1 | COI | 1 | 1 |
| Valves Inspection | 5 | 5 | 5 | 5 |
| Studs and Bolts Inspection | 10 | 10 | 10 | 10 |
| Mountings Inspection | 10 | 10 | 10 | 10 |
| Steam Gauge Test | COI | COI | COI | COI |
| Fusible Plug Inspection | 2.5 | ..... | COI | 2.5 |

[1] All intervals are in years; where COI is used, the intervals coincide with the applicable vessel's inspection for certification.

[2] Where the 2.5-year interval is indicated: two tests or inspections must occur within any five-year period, and no more than three years may elapse between any test or inspection and its immediate predecessor.

[3] Intervals for hybrid boilers are the same as for firetube boilers.

38. Section 61.05–15 is amended by revising paragraphs (a), (b), (c)(1), (f), and (g) to read as follows:

**§ 61.05–15 Boiler mountings and attachments.**

(a) Each valve shall be opened and examined by the marine inspector at the interval specified in Table 61.05–10.

(b) Each stud or bolt for each boiler mounting that paragraph (c) of this section requires to be removed may be examined by the marine inspector.

(c)(1) Each boiler mounting may be removed from the boiler and be examined by the marine inspector at the interval specified by Table 61.05–10 when any of the following conditions exist:

* * * * *

(f) Each steam gauge for a boiler or a main steam line may be examined and checked for accuracy by the marine inspector at the interval specified by Table 61.05–10.

(g) Each fusible plug may be examined by the marine inspector at the interval specified by Table 61.05–10.

39. Section 61.05–20 is revised to read as follows:

**§ 61.05–20 Boiler safety valves.**

Each safety valve for a drum, superheater, or reheater of a boiler shall be tested and resealed in the presence of the marine inspector at the interval specified by Table 61.05–10.

40. Section 61.10–5 is amended by revising the heading and paragraphs (a), (b), (d), and (g) to read as follows:

**§ 61.10–5 Pressure vessels in service.**

(a) *Basic requirement.* Each pressure vessel must be examined or tested twice within any five-year period, except that no more than three years may elapse between any test or examination and its immediate predecessor. The extent of the test or examination should be that necessary to determine that the pressure vessel's condition is satisfactory and that the pressure vessel is fit for the service intended.

(b) *Internal and external tests and inspections.* Each pressure vessel stamped with the Coast Guard symbol, and each pressure vessel in a system regulated under subpart 58.60 of this subchapter that is fitted with a manhole or other inspection opening so it can be satisfactorily examined internally, must be opened twice within any five-year period, except that no more than three years may elapse between any examination and its immediate predecessor. Each pressure vessel must be thoroughly examined internally and externally. No pressure vessel need be hydrostatically tested except when any defect in a pressure vessel is found that, in the marine inspector's opinion, may affect the safety of the pressure vessel; in this case, the pressure vessel should be hydrostatically tested at a pressure of 1½ times the maximum allowable working pressure.

* * * * *

(d) *Hydrostatic tests under pressure.* Each pressure vessel, other than one exempted by this section, must be subjected to a hydrostatic test at a pressure of 1¼ times the maximum allowable working pressure twice within any five-year period, except that no more than three years may elapse between any test and its immediate predecessor.

* * * * *

(g) *Bulk storage tanks.* Each bulk storage tank containing refrigerated liquefied $CO_2$ for use aboard a vessel as a fire-extinguishing agent shall be subjected to a hydrostatic test of 1½ times the maximum allowable working pressure in the tenth year of the installation and at ten-year intervals thereafter. After the test, the tank should be drained and an internal examination made. Parts of the jacket and lagging on the underside of the tank designated by the marine inspector must be removed at the time of the test so the marine inspector may determine the external condition of the tank.

* * * * *

41. Section 61.15–5 is amended by revising paragraph (b) to read as follows:

**§ 61.15–5 Steam piping.**

* * * * *

(b) All steam piping subject to pressure from the main boiler should be subjected to a hydrostatic test at a pressure of 1¼ times the maximum allowable working pressure of the boiler after every five years of service except as otherwise provided for in paragraph (a) of this section. Unless the covering of the piping is removed, the test pressure must be maintained on the piping for ten minutes. If any evidence of moisture or leakage is detected, the covering should be removed and the piping thoroughly examined. No piping with a nominal size of 3 inches or less need be hydrostatically tested.

* * * * *

## PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

42. The authority citation for part 111 is revised to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703; 49 CFR 1.46.

43. Subpart 111.93 (consisting of §§ 111.93–1, 111.93–3, 111.93–5, 111.93–7, 111.93–9, 111.93–11, and 111.93–13) is removed.

**§§ 111.93–1, 111.93–3, 111.93–5, 111.93–7, 111.93–9, 111.93–11, and 111.93–13 (Subpart 111.93) [Removed]**

Dated: April 13, 1995.

**G.N. Naccara,**

*Acting Chief, Office of Marine Safety, Security and Environmental Protectoin.*

[FR Doc. 95–10921 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–14–P

---

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–300379A; FRL–4941–7]**

**RIN 2070–AB78**

## Imidacloprid; Extended Tolerance on Dried Hops

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

**ACTION:** Final rule.

**SUMMARY:** This document extends the tolerance for residues of the insecticide 1-[(6-chloro-3-pyridinyl) methyl]-*N*-nitro-2-imidazolidinimine and its metabolites (common name ''imidacloprid'') in or on dried hops at 3.0 parts per million (ppm). On its own inititative, EPA is extending the tolerance to allow time to review a petition from the Interregional Research Project No. 4 (IR-4).

**EFFECTIVE DATE:** This regulation becomes effective May 10, 1995.

**ADDRESSES:** Written objections, identified by the document control number, [OPP-300379A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. 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. 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.

A copy of objections and requests for hearings filed with the Hearing Clerk

may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and requests for hearings must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and requests for hearings will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and requests for hearings in electronic form must be identified by the docket number, [OPP-300379A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and requests for hearings on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis H. Edwards, Product Manager (PM) 19, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: Edwards.Dennis@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 22, 1995 (60 FR 9815), on its own initiative and pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA proposed a time-limited tolerance, to expire June 28, 1996, permitting the combined residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on the raw agricultural commodity dried hops at 3.0 parts per million.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

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).

A record has been established for this rulemaking under docket number [OPP-300379A] (including copies of objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of written objections and hearing requests, identified by the document control number [OPP-300379A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at: opp-Docket@epamail.epa.gov.

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

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 27, 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. In § 180.472, by revising paragraph (d), to read as follows:

**§ 180.472 1-[(6-Chloro-3-pyridinyl) methyl]-N-nitro-2-imidazolidinimine; tolerances for residues.**

* * * * *

(d) A time-limited tolerance, to expire June 28, 1996, is established permitting residues of the insecticide 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine and its metabolites containing the chloropyridinyl moiety, all expressed as 1-[(6-chloro-3-pyridinyl)methyl]-*N*-nitro-2-imidazolidinimine, in or on the following raw gricultural commodity

| Commodity | Parts per million |
|---|---|
| Hops, dried ..... | 3.0 |

[FR Doc. 95–11385 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Part 180

**[PP 7F3516 and 6F3417/R2123; FRL–4947–5]**

**RIN 2070–AB78**

## Thiodicarb; Extension of Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This rule extends the temporary tolerances for the insecticide thiodicarb and its metabolite in or on leafy vegetables, broccoli, cabbage, and cauliflower until August 15, 1996. Rhone Poulenc Ag. Co. requested this regulation.

**EFFECTIVE DATE:** This regulation becomes effective May 10, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number [PP 7F3516 and 6F3417/R2123], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. 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. 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.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 7F3516 and 6F3417/R2123]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** Dennis Edwards, Jr., Product Manager (PM 19), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to petitions from the Rhone Poulenc Ag. Co., P.O. Box 12014, Research Triangle Park, NC 27709, EPA issued final rules establishing temporary tolerances for residues of the combined residues of the insecticide thiodicarb in or on leafy vegetables at 35 parts per million (ppm) and broccoli, cabbage, and cauliflower at 7 ppm (see the **Federal Register** of August 11, 1993 (58 FR 42673)).

To be consistent with conditional registrations for thiodicarb on leafy vegetables and broccoli, cabbage, and cauliflower, which were due to expire December 31, 1994, the Agency established the tolerances with an expiration date of August 15, 1995, to cover residues expected to be present from use during the period of conditional registration while the Agency continued to review studies on acetamide, a metabolite, and the chronic carcinogenicity studies for thiodicarb. The Agency concluded that the human risk posed by the use of thiodicarb on leafy vegetables and broccoli, cabbage, and cauliflower does not raise significant concerns and that extending the tolerances would still be protective of human health. The Agency is continuing to review submitted toxicology studies.

In a notice in the **Federal Register** of January 12, 1995 (60 FR 2962), the Agency announced the receipt of a request from Rhone Poulenc Ag. Co. to extend the temporary tolerance for thiodicarb and its metabolite for leafy vegetables and broccoli, cabbage, and cauliflower for 1 year with an expiration date of August 15, 1996. No comments were received as a result of the notice. Therefore, as set forth below, the temporary tolerances are extended for an additional year with an expiration date of August 15, 1996, to cover residues existing from the continued conditional registration of thiodicarb. The tolerances could be made permanent if full registration is subsequently granted. Notice of further action on these tolerances will be published for comment in the **Federal Register**. Residues remaining in or on the above raw agricultural commodities after expiration of the tolerances will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, provisions of the conditional registrations.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions for the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objections 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 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 issues(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

A record has been established for this rulemaking under docket number [PP 7F3516 and 6F3417/R2123] (including any objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 7F3516 and 6F3417/R2123], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

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 24, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, 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.

### § 180.407 [Amended]

2. Section 180.407 *Thiodicarb; tolerances for residues* is amended in paragraph (b) introductory text by changing ''August 15, 1995'' to read ''August 15, 1996'' and in paragraph (c) introductory text by changing ''August 15, 1995'' to read ''August 15, 1996''.

[FR Doc. 95–11384 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–F

---

## 40 CFR Part 180

**[PP 1F2507/R2135; FRL–4954–2]**

**RIN 2070–AB78**

## Diflubenzuron; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes tolerances for residues of the insecticide diflubenzuron in or on the raw agricultural commodities orange, grapefruit, and tangerine. Thompson-Hayward Chemical Co. requested pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) this regulation to establish maximum permissible levels for residues of diflubenzuron in or on the commodities.

**EFFECTIVE DATE:** May 10, 1995.

**ADDRESSES:** Written objections, identified by the document control number, [PP 1F2507/R2135], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. 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. 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 St., SW., Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [PP 1F2507/R2135]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail: Dennis H. Edwards, Jr., Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 207, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386; e-mail: edwards.dennis@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a public notice, published in the **Federal Register** of June 22, 1981 (46 FR 32313), which announced that Thompson-Hayward Chemical Co., P.O. Box 2383, Kansas City, KS 66110, had submitted petitions to EPA proposing tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide diflubenzuron (*N*-[[(4-chlorophenyl)amino] carbonyl]-2,6-difluorobenzamide) in or on the raw agricultural commodities orange, grapefruit, and tangerine at 0.50 part per million (ppm) and meat, milk, and eggs

at 0.05 ppm. Thompson-Hayward Chemical Co. (P.O. Box 2383, Kansas City, KS 66110) assigned all data rights and obligations connected to diflubenzuron (DFB) to Duphar B. V. of Amsterdam, Holland. Since then, Duphar B.V. has merged with Solvay and is now known as Solvay Duphar.

The petitions were subsequently amended, withdrawing the proposed tolerances for animal tissue, milk, and eggs since they were already established. The petitions were amended a second time to include citrus molasses at 0.05 ppm and processed citrus products at 0.05 ppm. (50 FR 32313, August 14, 1985). It was determined that separate tolerances were not needed for processed citrus products since residues in these products were lower than in the raw agricultural product. However, the petition was amended to propose establishment of tolerances for diflubenzuron in citrus oil at 75 ppm and in dried citrus pulp at 1 ppm (52 FR 2969, Jan. 29, 1987).

Notice of the tolerances currently requested by the petitions were republished on October 1, 1993 (58 FR 54357). There were no comments received in response to any of the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicity data considered in support of the tolerances include an acute oral toxicity study in rats with a median lethal dose ($LD_{50}$) greater than 5,000 milligrams/kilogram body weight (mg/kg), a 13-week subchronic feeding study in rats with a no-observed-effect-level (NOEL) of about 2 mg/kg/day (calculated by regression analysis), a 13-week subchronic feeding study in dogs with a NOEL of 40 ppm in the feed (1.6 mg/kg/day), a 2-year chronic feeding study in rats with a NOEL of 40 ppm in the feed (1.4 mg/kg/day), and a 1-year chronic oral (gavage) study in dogs with a NOEL of 2.0 mg/kg/day. In all the subchronic and chronic studies listed above, methemoglobinemia and/or sulfhemoglobinemia were observed at the next higher dose level.

In a 2-year carcinogenicity study in rats at dose levels up to 10,000 ppm in the feed (500 mg/kg/day) and in a 91-week carcinogenicity study in mice at dose levels up to 10,000 ppm in the feed (1,500 mg/kg/day), increased incidences of tumors were not observed.

In developmental toxicity studies in rats and rabbits, the NOEL for maternal toxicity and for developmental toxicity were greater than 1,000 mg/kg/day, the highest dose tested (HDT). In a two-generation reproduction study in rats, the NOEL for reproductive performance in adult rats was 50,000 ppm in the feed (2,500 mg/kg/day). Pup weights at this dose level were slightly reduced from birth to 21 days in F1 offspring.

A battery of genotoxicity studies using diflubenzuron as the test material were negative. These studies included a Salmonella/mammalian microsome plate incorporation assay with and without metabolic activation, an *in vitro* chromosome damage assay using cultures of Chinese hamster ovary cells with and without metabolic activation, and an unscheduled DNA synthesis assay using cultures of primary rat hepatocytes. A metabolism study, using radiolabeled diflubenzuron, is also available.

The reference dose (RfD) for diflbenzuron is 0.02 mg/kg/day and is based on the NOEL of 2.0 mg/kg/day in the 1-year chronic oral study in dogs. An uncertainty factor (UF) of 100 was used to calculate the RfD. Granting the tolerance on orange, grapefruit, and tangerine will increase the theoretical maximum residue contribution (TMRC) for diflubenzuron from 0.000719 mg/kg/day to 0.001900 mg/kg/day. The percentage of the RfD used is increased from 4.0 percent to approximately 10 percent. The highest DRES Population Sub-Group ''Non-Nursing Infants'' shows an increase from 0.003538 mg/kg/day to 0.006053 mg/kg/day, approximately 31 percent of the RfD.

Para-chloroaniline (PCA) and 4-clorophenylurea (CPU) are metabolites of diflubenzuron that have been observed in studies in lactating goats, lactating cows, pigs, poultry, rats, and mushrooms. A citrus metabolism study at the proposed label rate, however, has shown that PCA and CPU were not detected in whole citrus fruit or in citrus oil at levels above 1 ppb and 2 ppb, respectively. Further, PCA and CPU have not been detected in soybean or cotton seed. This suggests that diflubenzuron applied to citrus plants, soybeans, or cotton is not metabolized to PCA or CPU.

PCA has been tested for carcinogenicity by the National Toxicology Program (NTP) study [Technical Report Series No. 351, NIH Publication No. 89-2806, July 1989]. This test included two year oral studies in F344/N rats and B6C3F1 mice. PCA was administered by gavage to rats at 0,2,6, or 18 mg/kg/day and to mice at doses of 0,3,10, or 30 mg/kg/day. A treatment-related increased incidence of uncommon sarcomas (fibrosarcomas, hemangiosarcomas and osteosarcomas) of the spleen was observed in the male rats, and an increased incidence of combined hepatocellular adenomas/carcinomas was observed in male mice in these studies. The increase in combined tumors in male mice was primarily due to a dose-related increase in hepatocellular carcinomas.

Although diflubenzuron *per se* is negative in cancer bioassays, a quantitative cancer risk assessment was performed in connection with this tolerance because of the finding of small amounts of PCA and CPU in animals administered large amounts of DFB. Possible human exposure to PCA and CPU may result from ingestion of PCA and CPU formed in animals consuming feeds containing diflubenzuron residues and also from metabolic conversion of diflubenzuron to PCA and CPU in the human body. In doing this risk assessment, it was assumed that CPU has the same carcinogenic potential and potency as PCA. Although there is strong evidence supporting the carcinogenicity of PCA in rats and mice, the assumption that CPU also may be carcinogenic is not based on direct testing in animals, but rather on a comparison of the chemical structures of CPU and PCA.

None of the test data examined by the Agency indicated PCA and/or related metabolites posed a significant carcinogenic risk to humans. EPA estimated a carcinogenic risk of 2.7 X $10^{-7}$ from PCA and related metabolites in animal products, and 1.0 X $10^{-7}$ from PCA and related products converted in the human body from diflubenzuron and 9.4 X $10^{-7}$ from PCA and related metabolites in mushrooms for a total cancer risk estimate for PCA and related metabolites of 1.3 X $10^{-6}$. This estimate was increased significantly by EPA's assumption that CPU is a carcinogen. EPA concludes that any potential human cancer risk from this use on citrus and other established uses of diflubenzuron is negligible.

Solvay Duphar also petitioned for tolerances under FFDCA section 409 for diflubenzuron on citrus pulp and citrus oil. Tolerances are needed to prevent processed foods from being deemed adulterated when the processed food when ready to eat contains a pesticide residue at a level greater than permitted by the corresponding section 408 tolerance. 21 U.S.C. 342(a)(2). EPA has determined, however, that the citrus pulp and oil tolerances are not necessary. In 1981 and 1986, EPA had concluded that a citrus pulp tolerance was needed due to one processing study that showed levels of diflubenzuron in citrus pulp 1.9 times the level in oranges (i.e., a concentration factor of 1.9X). Other processing studies showed that processing citrus to pulp resulted in a reduction of diflubenzuron residues or a lower concentration factor than 1.9X.

Recently, EPA has begun averaging results from processing studies in determining concentration factors and, hence, whether section 409 tolerances are needed. When the results from all processing studies for citrus pulp are averaged, the concentration factor is lowered to 1.1X. Given the variability in analytical methods and this low concentration factor, EPA believes that it is unlikely that any citrus pulp derived from citrus containing legal levels of diflubenzuron could be reliably determined to have levels of diflubenzuron above the citrus tolerance. Because it is unlikely that citrus pulp will have levels of diflubenzuron above the section 408 tolerance, no section 409 tolerance is needed.

EPA has determined that no section 409 tolerance is necessary for citrus oil because citrus oil is not a ''ready to eat'' processed food and ''ready to eat'' foods containing citrus oil are unlikely to have diflubenzuron residues greater than the citrus tolerance. As noted above, under FFDCA section 402(a)(2), processed foods containing pesticide residues are not deemed adulterated if the level of pesticide residues in the processed food ''when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity.'' Traditionally, EPA has treated all processed food as ''ready to eat.'' In a petition filed by the National Food Processors Association and others, it has been argued that EPA's past practice is not consistent with the statute. Although EPA will address this issue more fully in its formal response to that petition, EPA agrees that its approach to the term ''ready to eat'' has not always been in accord with the plain meaning of that term. EPA believes that the common sense meaning of the term ''ready to eat'' food is food ready for consumption without further preparation. Citrus oil is not consumed ''as is'' but is used as a flavoring in other foods. As such, citrus oil is not ''ready to eat.'' Further, the use of citrus oil in the preparation of ''ready to eat'' foods involves such a significant dilution of the citrus oil that EPA believes that it is unlikely that these foods would contain levels of diflubenzuron greater than the citrus tolerance. Thus, no section 409 tolerance is needed for citrus oil.

The established tolerance of 0.05 ppm for residues of diflubenzuron on/in eggs, milk, fat, meat, and meat byproducts of goats, hogs, horses, sheep, and poultry is adequate to cover secondary residues resulting from the proposed use as delineated in 40 CFR 180.6(a)(2).

The metabolism of diflubenzuron for this use on orange, grapefruit, and tangerine is adequately understood. The residue of concern is diflubenzuron per se. An adequate analytical method, gas chromatography with electron capture detector, is available for enforcement purposes in the Pesticide Analytical Manual, Vol. II.

The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances for orange, grapefruit, and tangerine will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. 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 each such issue, 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 show 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.

A record has been established for this rulemaking under docket number [PP 1F2507/R2135] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [PP 1F2507/R2135], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and hearing requests filed with the Hearing Clerk can be sent directly to EPA at:
opp-Docket@epamail.epa.gov

A copy of electronic objections and hearing requests filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known 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 (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, 5U.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).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 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). (Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)).)

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 5, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.377 is amended in paragraph (a) in the table therein by adding and alphabetically inserting entries for the commodities orange, grapefruit, and tangerine, to read as follows:

**§ 180.377 Diflubenzuron; tolerances for residues.**

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Grapefruit | 0.5 |
| * * * * * | |
| Orange | 0.5 |
| * * * * * | |
| Tangerine | 0.5 |
| * * * * * | |

* * * * * *

[FR Doc. 95–11495 Filed 5–5–95; 2:12 pm]

BILLING CODE 6560–50–F

## 40 CFR Part 180

**[PP 4F4336/R2133; FRL–4953–8]**

**RIN 2070–AB78**

## Pesticide Tolerances for Prosulfuron

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes time-limited tolerances, to expire on December 31, 1995, for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea, in or on the raw agricultural commodities corn (fodder, forage, grain and fresh [including sweet kernels plus cobs with husks removed]) at 0.01 part per million (ppm), milk at 0.01 part per million (ppm), and fat, kidney, liver, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 part per million (ppm). Ciba-Geigy Corp. requested this regulation pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA). The regulation establishes maximum permissible levels for residues of the herbicide in or on the commodities.

**EFFECTIVE DATE:** This regulation becomes effective May 10, 1995.

**ADDRESSES:** Written objections and hearing requests, identified by the document control number, [PP 4F4336/R2133] maybe submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 36277M, Pittsburgh, PA 15251. A copy of objections and hearing request 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.

A copy of objections and requests for hearings filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies and requests for hearings must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and requests for hearings will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and requests for hearings in electronic form must be identified by the docket number [PP 4F4336/R2133]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and requests for hearings on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800; e-mail: taylor.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of November 2, 1994 (59 FR 54907), which announced that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, had submitted a pesticide petition, PP 4F4336, to EPA proposing to amend 40 CFR part 180 by establishing a tolerance under section 408 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a, for the residues the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea, in or on corn, forage at 0.02 ppm; corn, fodder at 0.02 ppm; corn, grain at 0.02 ppm; corn, fresh (including sweet kernels plus cobs with husks removed) at 0.02 ppm; milk at 0.02 ppm; meat byproducts, kidney and liver of cattle, goats, hogs, horses, and sheep at 0.10 ppm; poultry, fat, kidney, liver, meat and meat byproducts at 0.10 ppm; and eggs at 0.10 ppm.

The petitioner subsequently amended the petition by lowering the tolerances and withdrawing poultry from the list of proposed tolerances. A notice was not filed since there is less risk to man and the environment.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed

below were considered in support of this tolerance.

1. Several acute toxicology studies placing technical-grade prosulfuron in Toxicity Category III, and an acute neurotoxicity study in rats at dose levels of 0, 10, 250, 500, or 1,000 mg/kg with an NOEL of 10 mg/kg based on reduced motor activity and body temperature in males and impaired righting reflex in females. A 90-day neurotoxicity study in rats demonstrated NOELs of greater than 5,000 ppm in females and 10,000 ppm in males.

2. A 1-year feeding study with dogs fed dosages of 0, 0.33, 1.95, 18.6, or 41.0 mg/kg/day (males) and 0, 0.31, 1.84, 20.2, or 48.8 mg/kg/day (females). The NOEL was 1.84 mg/kg/day based on hematologic and clinical chemistry effects and incidence of lipofuscin accumulation in the liver at 18.6 mg/kg/day.

3. An 18-month carcinogenicity study in mice fed dosages of 0, 1.71, 81.4, 410 or 832 mg/kg/day (males), and 0, 2.11, 100, 508 or 1,062 mg/kg/day (females). There was no evidence of carcinogenic effects up to 1,062 mg/kg/day, the highest dose tested (HDT).

4. A 2-year chronic feeding/carcinogenicity study in rats fed dosages of 0, 0.4, 7.9, 79.9 or 160.9 (males), and 0, 0.5, 9.2, 95.7 or 205.8 mg/kg/day (females). There was uncertain evidence of carcinogenicity with slight increases in the incidence of mammary gland adenocarcinomas in females at 95.7 and 205.8 mg/kg/day, slight increase in incidence of benign testicular interstital cell tumors at 79.9 and 160.9 mg/kg/day (significant trend only). A systemic NOEL of 7.9 mg/kg/day was based on decreased body weight and body weight gain, hematopoietic effects (males), and possibly increased serum GGT and decreased liver, kidney and adrenal weights (females) at 79.9 mg/kg/day.

5. A three-generation reproduction study with rats fed dosages of 0, 0.67, 13.3, 136, or 278 (males), and 0, 0.76, 15.3, 152 or 311 mg/kg/day (females) with a reproductive and a systemic NOEL of 13.3 mg/kg/day based on decreased mean body weights and body weight gain observed at 136 mg/kg/day for both pups and parental animals.

6. A developmental toxicity study in rats at dose levels of 0, 5, 50, 200 and 400 mg/kg/day by gavage. The developmental NOEL was 200 mg/kg/day based on a statistically significant elevation of combined skeletal findings at 400 mg/kg/day, and maternal toxicity NOEL of 200 mg/kg/day, based on marginal effects on body weight gain at 400 mg/kg/day.

7. A developmental toxicity study in rabbits at dose levels of 0, 1.0, 10 and 100 mg/kg/day by gavage with no indications of developmental toxixicy at dose levels up to 100 mg/kg/day. The registrant was required to submit another study at higher doses to establish the NOEL and LEL for maternal and developmental toxicity. A new study is being conducted, and this deficiency is not considered sufficient to affect registration.

8. Three acceptable mutagenicity studies were reviewed for prosulfuron. These include assays with *Salmonella typhimurium* strains TA1535, TA1537, TA98, and TA100 or *E. coli* WP2 uvrA exposed in either the presence or absence of mammalian metabolic activation; unscheduled DNA synthesis (UDS) in primary rat hepatocytes; and a structural chromosomal aberration micronucleus test in mice. All these tests were negative for mutagenicity.

The prosulfuron Reference Dose (RfD) was established at 0.02 mg/kg/day based on the 1-year dog chronic feeding study with an uncertainty factor of 100. The theoretical maximum residue contribution (TMRC) for tolerances on corn grain, straw and forage, and milk, meat and meat byproducts utilizes 1.4% of the RfD for the total U.S. population. The most highly exposed subgroups, children (ages 1 to 6) and nonnursing infants (less than 1-year old), utilize 4.3% of the RfD.

The HED RfD/Peer Review Committee classified this chemical as a Class D oncogen based on the conclusion that there was uncertain evidence of carcinogenicity with slight increases in the incidence of mammary gland adenocarcinomas in female rats at 95.7 and 205.8 mg/kg/day, but significant only at 95.7 mg/ kg/day, a slight increase in incidence of benign testicular interstital cell tumors in rats at 79.9 and 160.9 mg/kg/day, and no evidence in carcinogenicity in mice.

The committee also decided that prosulfuron was not associated with any significant reproductive or develpmental toxicity under the conditions of testing.

This pesticide is useful for the purposes for which the tolerances are sought. The nature of the residues is adequately understood for the purposes of establishing these tolerances. An analytical method, HPLC with column switching, is available for determination of residues of prosulfuron in corn and has been validated by an independent laboratory. The field residue and radio-labeled field metabolism studies submitted to the Agency indicate that there are no residues in corn grain, forage or fodder following application of prosulfuron. In addition, as noted above, the TMRC for the most highly exposed subgroups utilizes only 4.3% of the RFD. Therefore, this time limited tolerance is being issued prior to the completion of the method validation process by the EPA laboratory. Because of this, the Agency has set an expiration date of December 31, 1995 for the tolerance. Adequate analytical methodology, HPLC with UV detection, for animal tissues is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication the enforcement methodology is being made available in the interim to anyone interested in pesticide enforcement when requested by mail from: Calvin Furlow, Public Response Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1130A, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Required data include a repeat of the developmental study in rabbits, the submission of stability data (storage and chemical), information on accuracy of the method used to verify the certified limits, experimental details of all solubility determinations, additional corn and ruminant metabolism data, and completion of method trial.

There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat, milk, and meat byproducts will be covered by the proposed tolerances in these commodities. Based on the data and information submitted above, the Agency has determined that the establishment of tolerances by amending 40 CFR part 180 will protect the public health. Therefore, EPA is establishing the tolerances as described below.

Any person adversely affected by this regulation may, within 30 days after the date of publication in the **Federal Register**, file written objections with the Hearing Clerk, Environmental Protection Agency, 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 each issue, 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.

A record has been established for this rulemaking under docket number [PP 4F4336/R2133] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and requests for hearings, identified by the document control number [PP 4F4336/R2133], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

A copy of electronic objections and requests for hearings filed with the Hearing Clerk can be sent directly to EPA at:

opp-Docket@epamail.epa.gov

A copy of electronic objections and requests for hearings filed with the Hearing Clerk must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all objections and hearing requests submitted directly in writing. The official rulemaking record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

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 defies a ''signficant 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 inconsistancy 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: May 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. By adding new § 180.481, to read as follows:

**§ 180.481 Prosulfuron; tolerances for residues.**

Time-limited tolerances, to expire on December 31, 1995, are established for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropyl)-phenyl-sulfonyl]-urea, in or on the following raw agricultural commodities:

| Commodity | Parts per million | Expiration date |
|---|---|---|
| Cattle, fat | 0.05 | Dec. 31, 1995. |
| Cattle, kidney | 0.05 | Do. |
| Cattle, liver | 0.05 | Do. |
| Cattle, meat | 0.05 | Do. |
| Cattle, mbyp | 0.05 | Do. |
| Corn, fodder | 0.01 | Do. |
| Corn, forage | 0.01 | Do. |
| Corn, grain and fresh (including sweet kernels plus cobs with husks removed). | 0.01 | Do. |
| Goats, fat | 0.05 | Do. |
| Goats, kidney | 0.05 | Do. |
| Goats, liver | 0.05 | Do. |
| Goats, meat | 0.05 | Do. |
| Goats, mbyp | 0.05 | Do. |
| Hogs, fat | 0.05 | Do. |
| Hogs, kidney | 0.05 | Do. |
| Hogs, liver | 0.05 | Do. |
| Hogs, meat | 0.05 | Do. |
| Hogs, mbyp | 0.05 | Do. |
| Horses, fat | 0.05 | Do. |
| Horses, kidney | 0.05 | Do. |
| Horses, liver | 0.05 | Do. |
| Horses, meat | 0.05 | Do. |
| Horses, mbyp | 0.05 | Do. |
| Milk | 0.01 | Do. |
| Sheep, fat | 0.05 | Do. |
| Sheep, kidney | 0.05 | Do. |
| Sheep, liver | 0.05 | Do. |
| Sheep, meat | 0.05 | Do. |
| Sheep, mbyp | 0.05 | Do. |

[FR Doc. 95–11667 Filed 5–8–95; 1:34 pm]

BILLING CODE 6560–50–F

## 40 CFR Part 271

**[FRL–5204–5]**

## Georgia; Final Authorization of Revisions to State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Georgia's revisions consist of the provisions contained in rules promulgated between July 1, 1992, and June 30, 1993, otherwise known as

RCRA Cluster III. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revisions. Georgia's application for program revisions is available for public review and comment.

**DATES:** Final authorization for Georgia's program revisions shall be effective July 10, 1995, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business July 9, 1995.

**ADDRESSES:** Copies of Georgia's program revision application are available during normal business hours at the following addresses for inspection and copying: Georgia Department of Natural Resources, Environmental Protection Division, Floyd Towers East, Room 1154, 205 Butler Street, SE, Atlanta, Georgia 30334; U.S. EPA Region IV, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–4216. Written comments should be sent to Al Hanke at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347–2234.

**SUPPLEMENTARY INFORMATION:**

## A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act (''RCRA'' or ''the Act''), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter ''HSWA'') allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive ''interim authorization'' for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–268 and 124 and 270.

## B. Georgia

Georgia initially received final authorization for its base RCRA program effective on August 21, 1984. Georgia has received authorization for revisions to its program through RCRA Cluster II on June 27, 1994, (4/26/94, 59 FR 21664). Today, Georgia is seeking approval of its program revisions in RCRA Cluster III in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Georgia's application and has made an immediate final decision that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision up until June 9, 1995.

Copies of Georgia's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Georgia's program revisions shall become effective July 10, 1995, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Georgia is today seeking authority to administer the following Federal requirements promulgated on July 1, 1992, through June 30, 1993.

| Federal requirement | HSWA or FR Notice | Promulgation | State authority |
|---|---|---|---|
| Checklist 107.—Oil filter exclusion. | 57 FR 29220 | 7/1/92 | 391–3–11–.07(1); 12–8–62(10); 12–8–64(1)(J); 12–8–65(a)(16) and (21) OCGA. |
| Checklist 108.—Toxicity characteristic revision; correction. | 57 FR 30657 | 7/10/92 | 391–3–11–.07(1); 391–3–11–.10(1); 12–8–62(10); 12–8–64(1)(D) and (E); 12–8–65(a)(16) and (21) OCGA. |
| Checklist 109.—Land disposal restrictions (LDR); newly listed waste. | 57 FR 37194 | 8/18/92 | 391–3–11–.02,–.07,–.08,–.10,–.11,–.05, and–.16; 12–8–62(13) and (14); 12–8–64(1)(A)(B)(C)(D)(E)(F) and (I); 12–8–65(a)(16)(21); 12–8–66. |
| Checklist 110.—Coke by–products listings. | 57 FR 37284 | 8/18/92 | 391–3–11–.07; 12–8–62(10)(20); 12–8–64(1)(J); 12–8–65(a)(16)(21). |
| Checklist 112.—Recycled used oil management standards. | 57 FR 41566 | 9/10/92 | 391–3–11–.02–.07–.10–.17; 12–8–62(11)(13)(22); 12–8–64(A)(B)(C)(D)(E)(F)(I); 12–8–65(a)(3)(16)(21); 12–8–66. |
| Checklist 113.—Financial responsibility for third party liability. | 57 FR 42832 | 9/16/92 | 391–3–11–.05; 12–8–62(11)(13); 12–8–64(1)(A)(C)(D)(E)(F); 12–8–69(2)(3)(16) and (21); 12–8–68(c); 12–8–65(a)(3)(16) and (21). |
| Checklist 115.—Reportable Quantity Adjustment, chlorinated toluene production wastes. | 57 FR 47376 | 10/15/92 | 391–3–11–.07(1); 12–8–62(10); 12–8–64(1)(D)(E); 12–8–65(a)(16)(21). |

| Federal requirement | HSWA or FR Notice | Promulgation | State authority |
|---|---|---|---|
| Checklist 118.—Liquids in Landfills II. | 57 FR 54452 | 11/18/92 | 391–3–11–.02(1) and (2) and .10(1) and (2); 12–8–64(1)(A)(B)(D)(F)(I); 12–8–65(a)(16)(21); 12–8–66(a). |
| Checklist 119.—Toxicity characteristic revision. | 57 FR 55114 | 11/24/92 | 391–3–11–.07; 12–8–62(10); 12–8–64(1)(D)(E); 12–8–65(a)(16)(21). |
| | 58 FR 6854 | 2/2/93 | 391–3–11–.07(1). |
| Checklist 120—Wood preserving; technical amendment. | 57 FR 61492 | 12/24/92 | 391–3–11–.07(1); 391–3–11–.10(2) and (1); 12–8–62(10)(11)(13); 12–8–64(1)(D)(E); 12–8–65(a)(16)(21)(3); 12–8–64(1)(A)(B)(C)(D)(F) and (I); 12–8–66. |
| Checklist 121.—Corrective action management units and temporary units. | 58 FR 8658 | 2/16/93 | 391–3–11–.02(1); 391–3–11–.10(2) and (1); 391–3–11–.16; 391–3–11–.11(12); 391–3–11–.11(7)(d); 12–8–64(1)(A)(B)(D)(F)(I); 12–8–65(a)(16)(21); 12–8–66(e). |
| Checklist 122.—Recycled used oil management standards. | 58 FR 26420 | 5/3/93 | 391–3–11–.07(1). 391–3–11–.10(2) and (1); |
| | 58 FR 33341 | 6/17/93 | 391–3–11–.17; 12–8–62(11)(13)(22); 12–8–64(1)(A)(B)(C)(D)(E)(F) and (I); 12–8–65(a)(3)(16) and (21); 12–8–66. |
| NCL.—LDR amendent third. | 58 FR 14317 | 3/17/93 | 391–3–11–.16. |
| Checklist 123.—LDR hazardous waste debris case–by–case capacity variance. | 58 FR 28506 | 5/14/93 | 391–3–11–.16; 12–8–62(13)(14); 12–8–64(1)(A)(B)(D)(F) and (I); 12–8–65(a)(16)(21); 12–8–66. |
| Checklist 124.—LDR for iqnitable and corrosive characteristic wastes. | 58 FR 29860 | 5/24/93 | 391–3–11–.10(2) and (1); 391–3–11–.16; 391–3–11–.11(7)(d); 12–8–62(13)(14); 12–8–64(1)(A)(B)(C)(D)(E)(F) and (I); 12–8–65(a)(16)(21); 12–8–66. |

Footnote: Checklist 117B—Georgia adopted 40 CFR Part 261, 1992, by reference at 391–3–11–.07(i). The wording ''Toxicity Characteristic'' is correct in the 1992 CFR. Since Georgia did not adopt subsequent final optional rules that incorrectly changed the wording, Georgia did not cite 57 CFR 23062 specifically.

## C. Decision

I conclude that Georgia's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Section 3008, 3013, and 7003 of RCRA.

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

*Certification Under the Regulatory Flexibility Act*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

## List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: April 28, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 95–11395 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Public Land Order 7141

**[UT–942–1430–01; UTU–42967, UTU–42983]**

## Revocation of Secretarial Orders Dated October 28, 1921, and February 27, 1934; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes two Secretarial Orders in their entireties that withdrew 80 acres of public land for powersite classification purposes. The land is no longer required for powersite purposes. The land will be opened to surface entry. The land has been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and these provisions are no longer required. The land has been and will remain open to mineral leasing.

**EFFECTIVE DATE:** August 9, 1995.

**FOR FURTHER INFORMATION CONTACT:** Karl Fridberg, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145, 801–539–4101.

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 hereby ordered as follows:

1. The Secretarial Orders dated February 27, 1934, which established Powersite Classification No. 283, and October 28, 1921, which established Powersite Classification No. 16, are hereby revoked in their entireties for the following described land:

**Salt Lake Meridian**

T. 13 S., R. 5 E.,
Sec. 31, SE¼NE¼ and NE¼SE¼.

The area described contains 80 acres in Sanpete County.

2. The State of Utah has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, 16 U.S.C. 818 (1988).

3. At 9 a.m. on August 9, 1995, the land described in paragraph 1 shall 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 9 a.m. on August 9, 1995, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

The land described in paragraph 1 has been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, and these provisions are no longer required.

Dated: April 21, 1995.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 95–11459 Filed 5–9–95; 8:45 am]

BILLING CODE 4310–DQ–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 46 CFR Part 15

**[CGD 92–061]**

**RIN–2115–AE28**

## Federal Pilotage Requirement for Foreign Trade Vessels

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending the regulations to require Federal pilots for foreign trade vessels: Navigating certain offshore marine oil terminals located within the U.S. navigable waters of the States of California and Hawaii; making intra-port transits within certain designated waters in the States of New York and New Jersey; and transiting certain designated waters of the State of Massachusetts. This action is necessary to ensure that vessels are navigated by competent, qualified individuals, who are knowledgeable of the local area. The Coast Guard believes this requirement will promote navigational safety, increase the level of accountability, and reduce the risk of an accident and the discharge of oil or other hazardous substances into these waters.

**EFFECTIVE DATE:** The final rule is effective on June 9, 1995.

**ADDRESSES:** Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

**FOR FURTHER INFORMATION CONTACT:** Mr. John R. Bennett, Merchant Vessel Personnel Division (G–MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–6102.

**SUPPLEMENTARY INFORMATION:**

Drafting Information: The principal persons involved in drafting this rule are Mr. John R. Bennett, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

### Regulatory History

On July 9, 1993, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Federal Pilotage Requirement for Foreign Trade Vessels'' in the **Federal Register** (58 FR 36914). This NPRM proposed areas in waters of the States of California, Hawaii, New York, New Jersey, and Massachusetts where a vessel engaged in foreign commerce would be required to use a Federally licensed first class pilot. The Coast Guard received seventy-five letters in response to the NPRM. The majority of these letters addressed the proposed pilotage requirements for New York and New Jersey.

### Background and Purpose

The principal reason for this rulemaking is to enhance the safety of vessels performing difficult mooring maneuvers, or transiting congested or restricted waters. As noted in the NPRM, State laws do not require use of a pilot in the areas covered by this rule. Under 46 U.S.C. 8503, the Coast Guard may prescribe pilotage regulations in waters not subject to State pilotage requirements.

### Discussion of Comments and Changes

*A. Summary*

Seventy nine comments were received. Many comments stated that this rulemaking was unnecessary because most of the vessels affected by this rulemaking are piloted by individuals who hold State and Federal pilot's licenses. While it is true that many vessels affected by this rule are piloted by individuals who hold State and Federal pilot's licenses, it is not always clear whether these individuals are operating under their State or Federal pilot's license. For clarification and disciplinary purposes, the Coast Guard needs: (1) To verify that certain vessels operating in certain waters are being piloted by an individual holding a pilot's license; and (2) to ensure that the pilot is operating under the authority of only one pilot's license.

There have been several marine casualties involving pilots holding both State and Federal licenses. In cases where the individual was operating under the authority of a State license the Coast Guard could not take disciplinary action. This rulemaking will help to ensure that all foreign trade vessels operating in the areas described in this rulemaking are required to be under the direction and control of a Federally licensed pilot who is knowledgeable of the local navigational hazards and operating conditions, and who can be held accountable for his or her actions in the event of a casualty.

Several comments requested a public hearing. However, it is the Coast Guard's belief that holding a public hearing would not result in additional or different information than was provided in the comments. Therefore, the Coast Guard decided not to hold a public hearing.

*B. California*

Six comments supported this section of the rulemaking based on the belief that the Coast Guard needs to be able to improve its oversight of pilotage and ensure the pilot has local knowledge of the pilotage area.

Two comments opposed this section of the rulemaking because of possible Federalism implications. They noted that the California State Lands Commission (the Commission) already has a regulation that addresses pilotage requirements at offshore terminals. The Commission's regulation requires a mooring master who holds a valid U.S. Coast Guard license as a master or mate,

with an endorsement as first class pilot for the area where the terminal is located. The mooring master must be on board vessels or barges during mooring and unmooring operations at an offshore terminal. The Coast Guard questioned the Commission concerning the intent of its regulation. The Commission stated that it has the authority to regulate the operations of offshore marine oil terminals in the safest manner possible. However, though it developed the mooring master requirements for offshore terminals, it did not intend that this action would establish a state pilotage requirement. The Commission further stated that it has no authority to assess penalties or take action against an individual's license. The Coast Guard also determined that the Commission's regulation does not apply to foreign trade vessels. Therefore, the Coast Guard concluded that this portion of the rulemaking had no Federalism implications.

In response to the NPRM, the Commander, Eleventh Coast Guard District recommended that the size of certain Federal pilotage areas described in this section of the rulemaking be reduced and that San Luis Obispo and Estero Bay be separated into two distinct pilotage areas. Both recommendations were considered prudent and reasonable, and have been adopted.

*C. Hawaii*

Four comments supported this section of the rulemaking stating that the Coast Guard needs to improve its oversight of pilotage in this region.

One comment opposed this section of the rulemaking stating that a Federal pilotage requirement is unnecessary because vessels using a single point mooring buoy already have a mooring master on board who is ''highly trained and familiar with the operation.'' While most vessels calling at the two offshore marine oil terminals in the State of Hawaii use a pilot to perform docking and undocking maneuvers, this is done voluntarily. There is no State requirement to use a pilot for these maneuvers.

*D. New York and New Jersey*

Eight comments supported this section of the rulemaking stating that the Coast Guard needs to improve its accountability over pilots in this and other areas. One comment in support also quoted the 1991 report from New York State Governor Cuomo's Task Force on Coastal Resources which specifically recommended that pilots be held accountable by the Federal or State agency which issues pilot's licenses. The comments also recognized the need to make pilotage of foreign trade vessels compulsory, stating that neither the States of New York nor New Jersey has a law or regulation in effect which would require a State pilot to be on board these foreign trade vessels when making an intra-port transit.

Three other comments in support of this section of the rulemaking cited the court case of *Baezler* v. *Mobil Oil Corporation*, 375 F.Supp. 1220, dated November 30, 1973. In this case, the District Court ruled that movements from New York harbor to Arthur Kill across Sandy Hook Bar did not amount to entering or departing from the Port of New York within New York or New Jersey compulsory pilotage statutes. This meant that vessels making this type of movement, which is defined as an intra-port transit in this rulemaking, were not required to take a State licensed Sandy Hook pilot.

One comment suggested that the definition used to describe the term ''intra-port transit'' should be expanded to include reference to the movement of a vessel ''from an anchorage to an anchorage.'' The Coast Guard agrees with this and has made the recommended change.

One comment addressed the rulemaking's effect on small entities such as shipping companies and pilots, and indicated that the rule would have little impact on small entities. The comment supported the Coast Guard's position that vessels routinely use the services of a pilot during intra-port transits.

Fifty comments opposed this section of the rulemaking. Thirty-one of these comments were from individuals who are current or past members of the New York or New Jersey Sandy Hook Pilots Association. There were six general reasons given in opposition to this section of the rulemaking.

First, some comments questioned whether navigational safety would be enhanced by this rulemaking. The Coast Guard believes this rulemaking will enhance navigational safety because it will require pilots where none were required before, and it will raise the level of accountability for pilots involved in marine accidents.

Second, some comments stated that State pilots are more competent than Federal pilots. The comments were made that an individual seeking to become a Sandy Hook pilot is required to complete nearly seven and one-half years of training with the Sandy Hook Pilots Association prior to being issued a full branch State pilot's license. Several comments also referred to the Coast Guard's ''Report of the Pilotage Study Group'' dated September 15, 1989. In this report, an assumption was made that a State license was indicative of greater training, education, and testing periods. This study is available for inspection or copying at the office listed under **ADDRESSES**.

In response to these comments, it should be noted that the Coast Guard completed a study in January, 1993 which compared marine casualties involving pilots operating under the authority of a Federal license with pilots operating under the authority of a State license. The study concluded that a pilot operating under the authority of a Federal license is no more likely to be involved in a marine casualty than a pilot operating under the authority of a State license. This study is available for inspection or copying at the office listed under **ADDRESSES**. Additionally, though the Coast Guard believes that Federal pilots are as competent as State pilots, this rulemaking will help to ensure that all foreign trade vessels use a Federally licensed pilot in the areas described where no State pilotage requirement is in effect.

Third, some comments believed that it is unsafe if a State pilot does not conn the vessel during intra-port transits. The Coast Guard is concerned with the safe navigation of vessels but notes that there is no Federal or State regulation which would require a State pilot to be aboard a foreign trade vessel making an intra-port transit. Consequently, this rulemaking will enhance navigational safety by requiring all foreign trade vessels to use a Federally licensed pilot during an intra-port transit in these waters.

Fourth, some comments argued that the Coast Guard should establish minimum clearance standards for a vessel's keel-to-bottom, and mast-to-overhead structure. The comment cited this approach as a better way to promote safety, accountability, and responsibility by limiting shipping companies from putting pressure on captains and pilots to get the vessel to or from the dock regardless of the circumstances. The Coast Guard believes that this proposal may be beneficial as an additional requirement, but it is not the subject of this rulemaking and should not be adopted as an alternative to requiring that those vessels making an intra-port transit have a licensed pilot on board. The Coast Guard believes this rulemaking will promote navigational safety, increase the level of accountability and reduce the risk of an accident and the discharge of oil or other hazardous substances by ensuring that vessels are navigated by competent,

qualified individuals, who are knowledgeable of the local area.

Fifth, some comments questioned the effect of this rulemaking on small entities. Several comments expressed a concern that the Coast Guard was trying to inflict economic hardship on the New York and New Jersey Sandy Hook Pilots Association and that this rulemaking would allow holders of a Federal pilot's license to ''come out of the woodwork'' and obtain contracts with companies which would effectively decrease the earnings of all members of the New York and New Jersey Sandy Hook Pilots Association. As indicated in the rulemaking, the Coast Guard is concerned with promoting navigational safety and does not believe this rulemaking will have a significant economic impact on a substantial number of small entities such as these pilots or shipping companies. Additionally, the Coat Guard notes that a State-licensed pilot may obtain a Federal license, and many pilots hold both licenses.

Sixth, forty-four comments questioned the Federalism implications of the rulemaking on New York and New Jersey. The comments stated that the laws of New York or New Jersey already cover some or all of the areas where a Federal pilotage requirement for foreign trade vessels making an intra-port transit was being proposed. The Coast Guard reviewed the existing pilotage regulations of the States of New York and New Jersey, and does not believe that the laws of either State require a pilot to be aboard a foreign trade vessel for the areas indicated.

Several comments also suggested that the Coast Guard delay implementation of the final rule citing legislative action being undertaken by the States of New York and New Jersey to close gaps in pilotage regarding intra-port transits. The Coast Guard delayed this rulemaking to provide the States of New York and New Jersey the opportunity to close these loopholes. If either State enacts legislation to require the use of a pilot for foreign trade vessels on intra-port transits for the areas indicated, and notifies the Secretary of that fact, the Coast Guard will withdraw its regulation for that region.

*E. Cape Cod Canal*

Seven comments were in favor of this section of the rulemaking.

One comment provided conditional support for the rulemaking. This conditional support requested that the Coast Guard delay its rulemaking and support a legislative effort by the State of Massachusetts that would satisfy the Coast Guard's concern. The Coast Guard reviewed the proposed legislation, and determined that this legislation would not require a State pilot to be on board foreign trade vessels in transit through the waters designated in the rulemaking. Therefore, this section of the rulemaking has been retained in the final rule.

**Regulatory Evaluation**

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

**Small Entities**

The only comments regarding the rulemaking's potential negative effect on small entities were made in reference to that section concerned with intra-port transits in the States of New York and New Jersey. The comments were reviewed, but the Coast Guard does not believe that this rulemaking will have a significant effect on the small entities referred to in this case, which would include shipping companies and certain pilot associations which may qualify as small entities. Therefore, because it expects the economic impact of this final rule to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism**

Congress specifically provided, under 46 U.S.C. 8503(a), that the Federal Government may require a Federally licensed pilot when a pilot is not required by State law. The States of California, Hawaii, New York and New Jersey, and Massachusetts do not have a requirement for a State pilot in the areas covered by this rule. Therefore, the Federal Government may act to require a Federally licensed pilot. However, under 46 U.S.C. 8503(b), the Federal government's authority to require pilots is only effective until the State having jurisdiction establishes a superseding requirement for a pilot, and notifies the Coast Guard of that fact. Since this action is intended to require the use of Federal pilots in instances where State pilots are not required, the Coast Guard does not believe that the preparation of a Federalism Assessment is warranted.

If the States of California, Hawaii, New York and New Jersey, or Massachusetts adopt superseding legislation requiring State pilots for foreign vessels and U.S. vessels sailing on registry, the Coast Guard would be required to withdraw the respective requirement for a Federally licensed pilot. Thus, the States of California, Hawaii, New York and New Jersey, or Massachusetts could preempt this rule, if these States were to adopt a law consistent with the requirements adopted in this rule. Under these circumstances, the Coast Guard would revise its regulations.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The Coast Guard believes that most individuals presently providing pilotage services to foreign trade vessels calling at the eight sites in California and two sites in Hawaii, and making intra-port transits within certain designated waters of New York and New Jersey, and transiting, but not bound to or departing from a port, within certain designated waters of Massachusetts will continue to provide pilotage services because most individuals already hold a Federal first class pilot's license for those waters. Therefore, this rule will permit affected vessels to continue to operate according to current industry practice. The Coast Guard also recognizes that this rule may have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings of vessels. However, this impact is not expected to be significant enough to warrant further documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 46 CFR Part 15**

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR Part 15 as follows:

## PART 15—MANNING REQUIREMENTS

1. The authority citation for Part 15 is revised to read as follows:

**Authority:** 46 U.S.C. 3703, 8105; 49 CFR 1.46.

2. Subpart I, consisting of §§ 15.1001 through 15.1040, is added to read as follows:

## Subpart I—Vessels in Foreign Trade

Sec.
15.1001 General.
15.1010 California.
15.1020 Hawaii.
15.1030 New York and New Jersey.
15.1040 Massachusetts.

## Subpart I—Vessels in Foreign Trade

### § 15.1001 General.

Self-propelled vessels engaged in foreign commerce are required to use a pilot holding an appropriately endorsed Federal first class pilot's license issued by the Coast Guard when operating in the navigable waters of the United States specified in this subpart.

### § 15.1010 California.

The following offshore marine oil terminals located within U.S. navigable waters of the State of California:

(a) *Carlsbad, CA.* The waters including the San Diego Gas and Electric, Encina Power Plant, lying within an area bounded by a line beginning at latitude 33°10′06″N, longitude 117°21′42″W, thence southwesterly to latitude 33°08′54″N, longitude 117°24′36″W, thence southwesterly to latitude 33°04′30″N, longitude 117°21′42″W, thence northeasterly to latitude 33°05′36″N, longitude 117°18′54″W, thence northwesterly along the shoreline to latitude 33°10′06″N, longitude 117°21′42″W.

(b) *Huntington Beach, CA.* The waters including the Golden West Refining Company, Huntington Beach Marine Terminal, lying within an area bounded by a line beginning at latitude 33°39′06″N, longitude 118°00′0″W, thence westerly to latitude 33°39′18″N, longitude 118°05′12″W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 33°35′30″N, longitude 118°00′00″W, thence easterly to latitude 33°35′30″N, longitude 117°52′30″W, thence northwesterly along the shoreline to latitude 33°39′06″N, longitude 118°00′00″W.

(c) *El Segundo, CA.* The waters including the Chevron USA, El Segundo Marine Terminal, lying within an area bounded by a line beginning at latitude 33°56′18″N, longitude 118°26′18″W, thence westerly to latitude 33°56′18″N, longitude 118°30′48W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 33°51′48″N, longitude 118°27′54″W, thence easterly to latitude 33°51′48″N, longitude 118°24′00″W, thence northwesterly along the shoreline to latitude 33°56′18″N, longitude 118°26′18″W.

(d) *Oxnard, CA.* The waters including the Southern California Edison Company, Mandalay Generating Station, lying within an area bounded by a line beginning at latitude 34°14′12″N, longitude 119°16′00″W, thence westerly to latitude 34°14′12″N, longitude 119°19′36″W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 34°09′24″N, longitude 119°17′20″W, thence easterly to latitude 34°09′24″N, longitude 119°13′24″W, thence northwesterly along the shoreline to latitude 34°14′24″N, longitude 119°16′00″W.

(e) *Goleta, CA.* The waters including the ARCO, Ellwood Marine Terminal, lying within an area bounded by a line beginning at latitude 34°26′12″N, longitude 119°57′00″W, thence southerly to latitude 34°22′48″N, longitude 119°57′00″W, thence southeasterly along a line drawn three nautical miles from the baseline to latitude 34°21′06″N, longitude 119°50′30.5″W, thence northerly to latitude 34°24′18″N, longitude 119°50′30″W, thence northwesterly along the shoreline to latitude 34°26′12″N, longitude 119°57′00″W.

(f) *Gaviota, CA.* The waters including the Texaco Trading and Transportation, Gaviota Marine Terminal, lying within an area bounded by a line beginning at latitude 34°28′06″N, longitude 120°16′00″W, thence southerly to latitude 34°25′06″N, longitude 120°16′00″W, thence easterly along a line drawn three nautical miles from the baseline to latitude 34°25′24″N, longitude 120°08′30″W, thence northerly to latitude 34°28′24″N, longitude 120°08′30″W, thence westerly along the shoreline to latitude 34°28′06″N, longitude 120°16′00″W.

(g) *Moss Landing, CA.* The waters including the Pacific Gas and Electric Company Power Plant, lying within an area bounded by a line beginning at latitude 36°49′00″N, longitude 121°47′42″W, thence westerly to latitude 36°49′00″N, longitude 121°51′00″W, thence southerly to latitude 36°47′00″N, longitude 121°51′00″W thence easterly to latitude 36°47′00″N, longitude 121°47′54″W, thence northerly along the shoreline to latitude 36°49′00″N, longitude 121°47′42″W.

(h) *Estero Bay, CA.* The waters including various moorings, including the Pacific Gas and Electric Company mooring and the two Chevron Oil Company Terminals lying within an area bounded by a line beginning at latitude 36°25′00″N, longitude 120°52′30″W, thence westerly to latitude 36°25′00″N, longitude 120°56′00″W, thence southerly to latitude 36°22′00″N, longitude 120°56′00″W, thence easterly to latitude 36°22′00″N, longitude 120°52′12″W, thence northerly along the shoreline to latitude 36°25′00″N, longitude 120°52′30″W.

(i) *San Luis Obispo Bay, CA.* The waters including the Unocal Corporation Avila Terminal and the approaches thereto, lying in an area bounded by a line beginning at latitude 35°09′42″N, longitude 120°46′00″W, thence southerly to latitude 35°07′00″N, longitude 120°46′00″W, thence easterly to latitude 35°07′00″N, longitude 120°43′00″W, thence northerly to latitude 35°10′24″N, longitude 120°43′00″W, thence westerly along the shoreline to latitude 35°09′42″N, longitude 120°46′00″W.

### § 15.1020 Hawaii.

The following offshore marine oil terminals located within U.S. navigable waters of the State of Hawaii: *Barbers Point, Island of Oahu.* The waters including the Hawaiian Independent Refinery, Inc. and the Chevron moorings lying within an area bounded by a line bearing 180 degrees true from Barbers Point Light to latitude 21°14.8′N, longitude 158°06.4′W, thence easterly to latitude 21°14.8′N, longitude 158°03.3′W, thence northeasterly to latitude 21°15.6′N, longitude 158°01.1′W, thence northwesterly to latitude 21°18.5′N, longitude 158°02.0′W, thence westerly along the shoreline to latitude 21°17.8′N, longitude 158°06.4′W.

### § 15.1030 New York and New Jersey.

The following U.S. navigable waters located within the States of New York and New Jersey when the vessel is making an intra-port transit, to include, but not limited to, a movement from a dock to a dock, from a dock to an anchorage, from an anchorage to a dock, or from an anchorage to an anchorage, within the following listed operating areas:

(a) East River from Execution Rocks to New York Harbor, Upper Bay;

(b) Hudson River from Yonkers, New York to New York Harbor, Upper Bay;

(c) Raritan River from Grossman Dock/Arsenal to New York Harbor, Lower Bay;

(d) Arthur Kill Channel;

(e) Kill Van Kull Channel;

(f) Newark Bay;

(g) Passaic River from Point No Point to Newark Bay;

(h) Hackensack River from the turning basin to Newark Bay; and

(i) New York Harbor, Upper and Lower Bay.

**§ 15.1040 Massachusetts.**

The following U.S. navigable waters located within the State of Massachusetts when the vessel is in transit, but not bound to or departing from a port within the following listed operating areas:

(a) Cape Cod Bay south of latitude 41°48′54″N;

(b) The Cape Cod Canal; and

(c) Buzzards Bay east of a line extending from the southernmost point of Wilbur Point (latitude 41°34′55″N longitude 70°51′15W) to the easternmost point of Pasque Island (latitude 41°26′55″N longitude 70°50′30″W).

Dated: April 24, 1995.

**G.N. Naccara,**

*Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 95–11303 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–14–P

---

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. 74–09; Notice 40]**

**RIN 2127–AE61**

## Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document amends the labeling requirements of Standard 213 that were adopted in a rule facilitating the manufacture of belt-positioning child seats (booster seats designed to be used with a vehicle's lap/shoulder belt system). Specifically, this document amends the requirements for a type of belt-positioning seat known as a dual-purpose booster (a booster that can be used with either a lap or a lap/shoulder belt when used with a shield-type component to restrain the upper torso of a child seated in the booster, but only with a lap/shoulder belt when used without the shield). In response to a petition for reconsideration from Gerry Baby Products, NHTSA is amending several of the labeling requirements to exclude dual-purpose boosters that are designed such that the shoulder belt is not placed in front of the child when the booster is used with a shield and a lap/shoulder belt. This rule also corrects labeling requirements adopted in the rule by excluding from those requirements car beds and rear-facing restraints, restraints for which the requirements were not intended.

**DATES:** This rule is effective August 8, 1995.

Manufacturers may voluntarily comply with the amendments promulgated by this final rule on or after June 9, 1995.

Petitions for reconsideration of the rule must be received by June 9, 1995.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street S.W., Washington, D.C., 20590.

**FOR FURTHER INFORMATION CONTACT:** Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919), or Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992), National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 21, 1994 (59 FR 37167), NHTSA published a final rule amending Standard 213 to facilitate the manufacture of ''belt-positioning'' child booster seats (i.e., booster seats designed to be used with a vehicle's lap/shoulder belt system). The amendment adopted performance and labeling requirements and test criteria for belt-positioning booster seats. The labeling requirements were intended to decrease the likelihood that positioning booster seats will be misused. The rule adopted requirements in S5.5.2(i)(2) for ''dual purpose'' boosters (boosters that can be used with either a lap or a lap/shoulder belt when used with a shield-type component to restrain the upper torso of the restrained child, but only with a lap/shoulder belt when used without the shield).

To ensure that dual purpose boosters are used with the proper vehicle belt system, S5.5.2(i)(2) requires dual purpose boosters to be labeled with the following warning:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield),* AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above description.*

The agency adopted the warning regarding the placement of the shoulder belt portion of the belt system behind the child in response to test data. Those data showed that, for small shield booster seats, ''the routing of the shoulder belt (three point belt) in front of the dummy significantly affected the [head injury criterion] HIC, 3 msec chest clip [acceleration], and head excursion values, regardless of dummy size.'' Specifically, the study stated that:

> The 3 year old dummy/three point belt tests had 80% to 90% higher HIC values than the corresponding lap only belt tests, while for the 6 year old dummy, the three point belt tests were 18% to 59% higher. The 3 year old/three point belt tests were the only test conditions that produced HIC values above 1000.

The study also showed that routing the shoulder belt in front of the dummy caused the chest clip acceleration to increase for the 3-year-old dummy tested in two shield booster seats, from 31G to 44G and from 38G to 45G, respectively. The chest acceleration increases for these seats were from about 36G to 52G and 28G to 44G, respectively, when tested using a six-year-old dummy. NHTSA stated that it did not know of any shield-type booster seat that performs well when the booster seat is used with a lap/shoulder belt system and the restraining system element (i.e., the shield) and the shoulder portion of the belt system is left in front of the child. In view of safety concerns about the performance of boosters when the restraining system element (shield) is used and the shoulder belt is in front of the child, NHTSA required dual purpose boosters to be labeled with an instruction to consumers to place the shoulder belt behind the child when the restraining system element (shield) is used, and required this instruction to be included in the printed instructions for each of these boosters (S5.6.1.9).

### Petition for Reconsideration

Gerry Baby Products Company petitioned for reconsideration of the final rule. Gerry informed NHTSA that the Gerry Double Guard, a dual purpose booster, is designed to have the lap/shoulder belt threaded through a

pathway in the base of the booster when the booster is used with a shield and a lap/shoulder belt. Gerry said that, since the shoulder belt is used to attach the booster to the seat when the booster is in the shield-mode, the instruction to ''use only'' the lap belt to restrain the booster is misleading for its restraint. Gerry also stated that since it is impossible to place the shoulder belt behind the child when the child is restrained in the Double Guard (the shoulder belt is routed under the child), the labeling requirement about placing the shoulder belt behind the child is inappropriate for its booster. Alternatively, the petitioner suggested amending the warnings required by S5.5.2(i)(2) and S5.6.1.9 to make them more suitable for the Double Guard.

NHTSA has reviewed Gerry's petition and agrees that the petitioner's arguments have merit. The instruction about using only the vehicle's lap belt to attach the booster does not appear correct for a booster such as the Double Guard, which uses both the lap and shoulder belts for attachment. Moreover, the instruction about placing the shoulder belt behind the child is inappropriate for boosters that, by design, will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. Indeed, since the Double Guard is designed so that the shoulder belt is actually placed under the child (routed through a pathway in the booster's base) when the booster is used with a shield and a lap/shoulder belt, the label required by S5.5.2(i)(2) to place the shoulder belt behind the child could mislead and confuse consumers about the proper attachment of the booster seat. Moreover, Gerry's seat, through its design that routes the shoulder belt under the child, avoids the safety concerns about the increased HIC, chest acceleration and head excursion found in the report for shield-boosters used with the shoulder belt routed in front of the child.

Accordingly, NHTSA is amending S5.5.2(i)(2) and S5.6.1.9 to exclude from those requirements dual-purpose boosters that are designed such that, when the restraint is used according to the manufacturer's instruction, the shoulder belt cannot be placed in front of the child when the booster is used with a shield and a lap/shoulder belt. However, this rule retains a requirement that all dual purpose boosters be labeled with a warning or contain a warning in their instructions to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

**Correction**

The July 1994 rule required restraints other than dual-purpose boosters to be labeled with a warning similar to that discussed above for dual-purpose boosters. The rule required belt-positioning boosters to be labeled with a warning to use only the vehicle's lap/shoulder belt system to restrain the child. Shield-type boosters were required to bear a warning label to use only a lap belt or the lap belt part of a lap/shoulder belt system. The intent of the requirements was to ''decrease the likelihood that belt-positioning seats will be misused,'' i.e., used with an incorrect vehicle belt system. 59 FR at 37167, 37172.

The rule adopting the labeling requirements intended those requirements to apply only to booster seats, and not to every type of child restraint system. However, as drafted, the rule applies those requirements to car beds and rear-facing child restraint systems (a child restraint that positions a child to face in the direction opposite to the normal direction of travel of the motor vehicle). Because the application of the labeling requirement to car beds and rear-facing restraints was inadvertent, NHTSA is correcting the error by revising the introductory paragraph of S5.5.2(i)(1) to exclude those restraint systems from the requirement. NHTSA is also making a conforming change to S5.6.1.9(a) of the standard, which requires the warning about proper belt use to be included in the manufacturer's instructions for the restraint. NHTSA is amending that section to exclude from that requirement instructions for car seats and rear-facing child restraints. (This rule also redesignates S5.6.1.9 (a) through (c) as S5.6.1.10 (a) through (c), since they relate to a subject matter that is unrelated to that of the introductory paragraph of S5.6.1.9.)

**Request for Interpretation**

In the July 1994 rule, NHTSA adopted a requirement prohibiting belt-positioning boosters from being certified for use on aircraft. In its petition for reconsideration, Gerry asked how this requirement applies to the Double Guard, given that the booster is both a belt-positioning booster and a shield booster.

As a result of the July 1994 rule, Standard 213's certification requirements for the two types of boosters are different. The rule requires that manufacturers of belt-positioning boosters label them with the following statement: ''This Restraint is Not Certified for Use in Aircraft.'' Shield-type boosters are treated differently because they can be certified for aircraft use. Manufacturers of shield boosters wishing to so certify their boosters must label them with the following statement: ''This Restraint is Certified for Use in Motor Vehicles and Aircraft.''

Gerry said the Double Guard is presently labeled with the aircraft certification, in accordance with the above requirement. Gerry asks whether it could certify its Double Guard, when used with its shield, for aircraft use. To make clear the limitation of that certification, as well as to comply with the new rule, Gerry would state that ''THIS RESTRAINT IS NOT CERTIFIED FOR USE IN AIRCRAFT,'' but insert the following language, ''When used without the shield as a belt positioning seat,'' in front of the required statement.

NHTSA has reviewed the labeling requirement in question and has determined that it can be interpreted as permitting Gerry to label its booster as it desires. Given the dual nature of Gerry's Double Guard, it appears to be subject to the labeling requirements for both shield and belt-positioning boosters. It further appears that the booster complies with the requirements for both types. The only variation from the required labeling is Gerry's added clarification, ''When used without the shield as a belt-positioning seat * * *'' This addition is appropriate, and necessary, to clarify the required text. The agency's longstanding position with regard to the labeling required by Standard 213 is that voluntarily added wording which clarifies required text is permitted, as long as the added language does not confuse or obscure the required labeling. Gerry's added text does not confuse or obscure the required label. Indeed, it clarifies the labeling. Therefore, it would be permitted.

However, Gerry's ability to certify its Double Guard booster for aircraft could be affected in the future by possible rulemaking on the certification of child restraints for aircraft. The Federal Aviation Administration (FAA) is concerned about the effectiveness of booster seats on aircraft, as a result of a testing program performed at FAA's Civil Aeromedical Institute (CAMI). The CAMI research is discussed in a report entitled, ''The Performance of Child Restraint Devices in Transport Airplane Passenger Seats,'' which was published in September 1994. A copy of the report has been placed in the NHTSA rulemaking docket for this notice.

**Effective Date**

This amendment is effective June 9, 1995. An effective date earlier than 180 days after the date of issuance of this

rule is in the public interest because this rule relieves manufacturers of child restraints of certain designs from a labeling requirement that is inappropriate for those restraints. Yet, this rule specifies a warning requirement for those restraints in place of the removed requirement, to help ensure the restraints are properly used with the vehicle's lap/shoulder belt system. A 90-day effective date provides manufacturers sufficient leadtime to print revised warning labels.

Nevertheless, this rule provides an optional early effective date for manufacturers that can meet the new requirements sooner than 90 days. They may comply with the amendments in this rule any time after June 9, 1995, but not later than August 8, 1995.

## Rulemaking Analyses and Notices

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' The agency has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures, and has determined that it is not ''significant'' under them. NHTSA has further determined that the effects of this rulemaking are minimal and that preparation of a full final regulatory evaluation is not warranted. Manufacturers will be minimally affected by this action because it only makes slight changes to the July 1994 final rule which only minimally affected manufacturers since the rule simply permitted new designs in booster seats and did not require any design change or impose additional costs on any party.

*Regulatory Flexibility Act*

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Of the 11 current child restraint manufacturers known to the agency (not counting vehicle manufacturers that produce and install built-in restraints), there are three that qualify as small businesses. This is not a substantial number of small entities.

Regardless of the number of small entities, NHTSA believes the economic impact on them is not significant since today's rule only makes minor changes to the existing labeling requirements for some dual-purpose restraints. The agency believes this rule has no impact on the cost of child restraint systems, and that small organizations and governmental jurisdictions that purchase the systems will therefore not be significantly affected by the rule. In view of the above, the agency has not prepared a final regulatory flexibility analysis.

*Executive Order 12612 (Federalism)*

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

*National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

*Executive Order 12778 (Civil Justice Reform)*

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

## List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

## PART 571—[AMENDED]

In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

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

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

2. Section 571.213 is amended by revising the introductory text of S5.5.2(i)(1), revising S5.5.2(i)(2), republishing the introductory paragraph of S5.6.1.9, redesignating S5.6.1.9 (a) through (c) as S5.6.1.10(a) through (c) and revising (a) and (b) and republishing (c) to read as follows:

### § 571.213 Standard No. 213, Child restraint systems.

* * * * *

S5.5.2 * * *

(i)(1) For a booster seat that is recommended for use with either a vehicle's Type I or Type II seat belt assembly, one of the following statements, as appropriate:

* * * * *

(2)(i) Except as provided in paragraph (i)(2)(ii) of this section, for a booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies, the following statement:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield),* AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above description.*

(ii) A booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies is not subject to S5.5.2(i)(2)(i) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, such a booster shall be labeled with a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

* * * * *

S5.6.1.9 In the case of each rear-facing child restraint system that has a means for repositioning the seating surface of the system that allows the system's occupant to move from a reclined position to an upright position during testing, the instructions shall include a warning against impeding the ability of the restraint to change adjustment position.

S5.6.1.10(a) For instructions for a booster seat that is recommended for use with either a vehicle's Type I or Type II seat belt assembly, one of the following statements, as appropriate, and the reasons for the statement:

(i) WARNING! USE ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN RESTRAINING THE CHILD IN THIS BOOSTER SEAT; or,

(ii) WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE

LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD IN THIS SEAT.

(b)(i) Except as provided in S5.6.1.10(b)(ii), the instructions for a booster seat that is recommended for use with both a vehicle's Type I and Type II seat belt assemblies shall include the following statement and the reasons therefor:

WARNING! USE ONLY THE VEHICLE'S LAP BELT SYSTEM, OR THE LAP BELT PART OF A LAP/SHOULDER BELT SYSTEM WITH THE SHOULDER BELT PLACED BEHIND THE CHILD, WHEN RESTRAINING THE CHILD WITH THE *insert description of* the system element provided to restrain forward movement of the child's torso when used with a lap belt (e.g., shield), AND ONLY THE VEHICLE'S LAP AND SHOULDER BELT SYSTEM WHEN USING THIS BOOSTER WITHOUT THE *insert above* description.

(b)(ii) A booster seat which is recommended for use with both a vehicle's Type I and Type II seat belt assemblies is not subject to S5.6.1.10(b)(i) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, the instructions for such a booster shall include a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

(c) The instructions for belt-positioning seats shall include the statement, ''This restraint is not certified for aircraft use,'' and the reasons for this statement.

* * * * *

Issued on May 4, 1995.

**Ricardo Martinez,**

*Administrator.*

[FR Doc. 95–11392 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 672

**[Docket No. 95020641–5041–01; I.D. 050495B]**

## Groundfish of the Gulf of Alaska; Pacific Cod in the Western Regulatory Area

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting retention of Pacific cod by vessels catching Pacific cod in the Western Regulatory Area of the Gulf of Alaska (GOA) for processing by the offshore component. NMFS is requiring that catches of Pacific cod by these vessels in the Western Regulatory Area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of Pacific cod specified for the offshore component in this area has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), May 5, 1995, until 12 midnight, A.l.t., December 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907–586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii), the allocation of Pacific cod total allowable catch (TAC) for the offshore component in the Western Regulatory Area, GOA, was established by the final 1995 groundfish specifications (60 FR 8470, February 14, 1995), as 2,010 metric tons (mt).

The Director, Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the allocation of Pacific cod TAC specified for the offshore component in the Western Regulatory Area, GOA, has been reached. Therefore, NMFS is requiring that further catches of Pacific cod by operators of vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area in the GOA, be treated as prohibited species in accordance with § 672.20(e)(4).

### Classification

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

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

Dated: May 5, 1995.

**Richard W. Surdi,**

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

[FR Doc. 95–11542 Filed 5–5–95; 3:14 pm]

BILLING CODE 3510–22–F

## 50 CFR Parts 672 and 675

**[Docket No. 95031062–5121–02; I.D. 021695C]**

**RIN 0648–AH40**

## Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Revised Product Recovery Rate

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces approval of a regulatory amendment to revise the standard product recovery rate for pollock, deep skin fillets, and product code 24. The revision is necessary to respond to new information on the current recovery rate achieved by the groundfish processing industry for this product type. This action is intended to further the objectives of the fishery management plans (FMPs) for the groundfish fisheries off Alaska.

**EFFECTIVE DATE:** June 9, 1995.

**ADDRESSES:** Copies of the environmental assessment/regulatory impact review (EA/RIR) may be obtained from the Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area is managed by NMFS according to the FMP for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared

by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Regulations at §§ 672.20(j) and 675.20(k) establish standard product types and standard product recovery rates (PRRs) for groundfish harvested and processed off Alaska. This rule revises the pollock deep skin fillet PRR from the current standard of 0.13 to a new standard of 0.16. An explanation of, and reasons for, this amendment are contained in a notice of proposed rulemaking (60 FR 13106, March 10, 1995). That document invited comments through April 10, 1995. One letter of comment was received. It is summarized and responded to in the Comments Received section, below.

## Changes in the Final Rule From the Proposed Rule

None.

*Comments Received*

NMFS received one letter of comment on the proposed rule. This comment supported the proposed action.

*Comment 1.* The standard product recovery rate for pollock deep skin fillets should be revised from 0.13 to 0.16.

*Response.* NMFS concurs in this comment.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified 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 following is a summary of information, on which this certification was based:

A Final Regulatory Flexibility Analysis (FRFA) was prepared for rulemaking that implemented standard product recovery rates for groundfish products produced off Alaska. Based on the FRFA, it was determined that the standard product recovery rates would have a significant economic impact on a substantial number of small entities. Nonetheless, although this particular regulatory amendment would affect a substantial number of harvesting vessels, which are considered small entities, the effects on those vessels would not result in a reduction in annual gross revenues by more than 5 percent, annual compliance costs of more than 5 percent, or compliance costs of least 10 percent higher as a percent of sales for large entities.

A copy of the EA/RIR/FRFA prepared for the final rule that implemented standard product recovery rates for groundfish products produced off Alaska may be obtained from the Director, Alaska Region, NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of E.O. 12866.

## List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: May 3, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

## PART 672—GROUNDFISH FISHERY OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.20, paragraph (i)(3) table, entry 24 is revised, and in Table 1 to § 672.20 Product Codes 15 through 32 are amended by revising the entry for pollock to read as follows:

**§ 672.20 General limitations.**

* * * * *

(i) * * *

(3) * * *

| Product code | Product description | Standard product recovery rate |
|---|---|---|
| * | * * * | * |
| 24 | Deep skin fillets ..... | 0.16 |
| * | * * * | * |

TABLE 1 TO § 672.20 (CONTINUED).—TARGET SPECIES CATEGORIES, PRODUCT CODES AND DESCRIPTIONS, AND STANDARD PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES REFERENCED IN 50 CFR 672.20(a)(1) AND/OR 675.20(a)(1)

| FMP species | Product code | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Species code | 15 Pectoral girdle | 16 Heads | 17 Cheeks | 18 Chins | 19 Belly | 20 Fillets: With skin and ribs | 21 Fillets: Skin on no ribs | 22 Fillets: With ribs on no skin | 23 Fillets: Skinless/ bonesless | 24 Fillets: Deep skin | 30 Surimi | 31 Mince | 32 Meal |
| * | * | | * | | | * | | * | | | * | | * | |
| Pollock ..... | 270 | | 0.15 | | | | 0.35 | 0.30 | 0.30 | 0.21 | 0.16 | /1/0.16 /2/0.17 | 0.22 | 0.17 |
| * | * | | * | | | * | | * | | | * | | * | |

[1] Standard pollock surimi rate during January through June.
[2] Standard pollock surimi rate during July through September.

## PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

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

4. In § 675.20, paragraph (j)(3) table, entry 24 is revised to read as follows:

**§ 675.20 General limitations.**

* * * * *

(j) * * *

(3) * * *

| Product code | Product description | Standard product recovery rate |
|---|---|---|
| | * * * * * | |
| 24 | Deep skin fillets ..... | 0.16 |

* * * * *

[FR Doc. 95–11429 Filed 5–9–95; 8:45 am]

BILLING CODE 3510–22–W

# Proposed Rules

Federal Register
Vol. 60, No. 90
Wednesday, May 10, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

**RIN 3150–AF36**

### Changes to Nuclear Power Plant Security Requirements Associated with Containment Access Control

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing amending its regulations to delete certain security requirements for controlling the access of personnel and materials into reactor containment during periods of high traffic such as refueling and major maintenance. This action would relieve nuclear power plant licensees of the requirement to separately control access to reactor containments during periods of high traffic, such as refueling and major maintenance outages. Deletion of this requirement would decrease the regulatory burden for the licensees without degradation of physical security. This action follows reconsideration by the NRC of nuclear power plant physical security requirements to identify those that are marginal to safety, redundant, or out-of-date.

**DATES:** Submit comments by June 9, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attn: Docketing and Service Branch. Hand deliver comments to 11545 Rockville Pike, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on this rulemaking are also available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Single copies of this proposed rulemaking may be obtained by written request or telefax ((301) 415–2260) from: Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as indicated above.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sandra Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6261, e-mail sdf@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

## Background

In 1991, the Commission staff re-examined the NRC's nuclear power plant security requirements contained in 10 CFR part 73, ''Physical Protection of Plants and Materials,'' associated with an internal threat. Requirements were identified that were redundant, out-of-date, or marginal-to-safety (SECY–92–272). Following public meetings held to discuss these requirements, the NRC staff recommended changes to § 73.55 (SECY–93–326). One of the recommended changes was the deletion of § 73.55(d)(8), which contains a requirement for separate access control to reactor containments, which is unneeded, and a requirement for locks and alarms, which is contained

elsewhere in part 73. If this paragraph were removed it would provide burden relief to the licensees without compromising the physical protection of the health and safety of the public against radiological sabotage. The NRC is proposing this rulemaking in response to the above recommendation. The other recommendations will be addressed in other NRC actions.

**Discussion**

Paragraph (d)(8) in § 73.55 requires physical protection for access into reactor containment. The paragraph contains two requirements, one is a requirement for locks and alarms. The second requires control, by a guard or watchman, of access of personnel and material into containment during periods of high traffic such as refueling and major maintenance outages.

When paragraph (d)(8) was promulgated there were no specific access authorization regulations, thus no additional protection for reactor containment against the insider threat. Subsequent rulemakings have been promulgated directed at protecting against the insider threat, namely § 73.56, ''Personnel access authorization requirements for nuclear power plants,'' and § 73.57, ''Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.'' Reactor containment or adjacent areas that provide access to containment are already vital areas. Thus, access of personnel into containment during periods of high traffic, such as refueling and major maintenance outages, is already controlled. In addition having security personnel control access of materials into containment during periods of high traffic provides no substantial benefit since material access into the protected area is already controlled and the containment is located within the protected area. Moreover, even certain ''authorized'' materials could be misused once in containment. The requirement that access be controlled by a guard or watchman provides little security since the purpose is to control access, which has already been provided, and not prevent a forced entry. After reactor containment is secured following periods of heavy traffic, existing NRC requirements for walkdown inspections and security searches apply and assure the security of the containment. Hence, the requirement that access into the reactor containment itself be separately controlled provides little or no additional security.

In addition, because a reactor containment is a vital area, it is subject to the vital area requirements for locks and alarms contained in other sections of § 73.55, as well as all other policies and procedures related to vital areas and equipment. Thus, the requirement for locks and alarms in paragraph (d)(8) is redundant.

For these reasons, the NRC believes that deletion of § 73.55(d)(8) would relieve licensees of an unnecessary burden, without degradation of physical security. Moreover, since security personnel would no longer be required to be assigned to a radiation control area, there would be a decrease in occupational exposure. It should be noted that this change would apply only to access from vital areas into reactor containment (which continues to remain a vital area) and does not relieve the licensee of requirements to provide radiological controls or of other requirements for personnel accountability.

**Environmental Impact: Categorical Exclusion**

The Commission has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

**Paperwork Reduction Act Statement**

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0002.

**Regulatory Analysis**

Elimination of § 73.55(d)(8) would relieve licensees of the requirement to station security personnel at entrances to containment during periods of high traffic. The potential savings to the licensees from the elimination of this requirement are substantial. Assuming, on the average, 2 security personnel are needed to control access to containment during the time the reactor is open, and assuming that the containment is open 50 days per major outage, with two major outages every 3 years, and a wage of approximately $30 per hour (loaded) for security personnel, the total savings per reactor per year would be:

2 guards/reactor × 50 days/outage × 2/3 outages/year × $30/hr-guard × 24 hrs/day = $48,000/year-reactor.

With 110 operating nuclear power reactors, the total savings for the industry are potentially $5,280,000/year. Moreover, deletion of paragraph (d)(8) would result in a decrease in occupational exposure because security personnel would no longer be required to be within the radiation controlled area directly adjacent to containment.

Based on the above discussion, the NRC concludes that eliminating § 73.55(d)(8) would provide relief to the licensees, and lower occupational exposure, without compromising physical protection of the public health and safety against radiological sabotage at licensed nuclear power reactors.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act, 13 CFR part 121.

**Backfit Analysis**

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule because this amendment would not impose new requirements on existing 10 CFR part 50 licensees. It is voluntary and should the licensee decide to implement this amendment, it is a reduction in burden to the licensee. Therefore, a backfit analysis has not been prepared for this amendment.

**List of Subjects in 10 CFR Part 73**

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR part 73.

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for part 73 continues to read as follows:

**Authority:** Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

**§ 73.55 [Amended]**

2. In § 73.55, paragraph (d)(8) is removed and paragraph (d)(9) is redesignated as (d)(8).

Dated at Rockville, Maryland, this 2nd day of May, 1995.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc. 95–11482 Filed 5–9–95; 8:45 am]

BILLING CODE 7590–01–P

## FEDERAL TRADE COMMISSION

## 16 CFR Part 444

## Regulatory Flexibility Act Review of Trade Regulation Rule Concerning Credit Practices

**AGENCY:** Federal Trade Commission.

**ACTION:** Termination of review.

**SUMMARY:** In accordance with the Regulatory Flexibility Act (5 U.S.C. 601) (''the RFA'') and a published plan for Periodic Review of Commission Rules (46 FR 35118 (July 7, 1981)), the Federal Trade Commission solicited comments and data on whether the Trade Regulation Rule Concerning Credit Practices (16 CFR part 444) (the ''Rule'') has had a significant impact on a substantial number of small entities, and if it has, whether the Rule should be amended to minimize any significant impact on small entities (59 FR 18009 (April 15, 1994)). The Commission also requested comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of it systematic review of all current Commission regulations and guides. The notice required comments to be submitted to the Commission no later than June 14, 1994. Based on the comments received, which are summarized in this notice, the Commission finds that there is an insufficient basis to conclude that the Rule has had a significant economic impact upon a substantial number of number entities of otherwise merits revision. The Commission is therefore terminating this review.

**DATES:** This action is effective as of May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Wilmore, Attorney, Division of Credit Practices, Bureau of Consumer Protection, Room S4429, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580. Tel: (202) 326–3224.

**SUPPLEMENTARY INFORMATION:** The RFA requires the Federal Trade Commission to conduct a periodic review of rules issued by the Commission that have or will have a significant economic impact on a substantial number of small entities. For the purpose of the RFA review, the term ''small entity'' is defined under the Small Business Size Standards, codified at 13 CFR part 121 and revised by the Small Business Administration (49 FR 5024–5048 (Feb. 9, 1984)). In addition, the Commission has determined, as a part of its oversight responsibilities, to review rules and guides periodically. These reviews will seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission. This periodic review is conducted in accordance with the Commission's plan for periodic review of rules (46 FR 35118 (July 7, 1981)).

### I. Background and Summary

The Commission promulgated the Rule on March 1, 1984, (49 FR 7740), and it became effective on March 1, 1985. The Rule applies to lenders and retail installment sellers (creditors) and prohibits them from directly or indirectly taking or receiving from a consumer an obligation that includes certain contract provisions determined to be unfair, failing to provide a notice to potential cosigners, or using an unfair method of calculating late fees.

In promulgating the Rule, the Commission found that: (1) consumers suffers substantial economic and non-economic injury from creditors' use of the remedies that the Rule restricts; (2) consumers themselves cannot reasonable avoid these remedies or avoid the harsh consequences of the remedies by avoiding default; and (3) the overall costs to consumers are greater than the countervailing benefits that the use of these remedies provide to consumers or creditors.[1]

The notice that initiated this review requested comments on whether any part of the Rule has had a significant impact on a substantial number of small entities and, if so, whether any such impact can be reduced consistent with the operation of the Rule.

In addition, the Commission requested comments on a number of other issues relating to the operation of the Rule.

### II. Public Comments

In response to the **Federal Register** notice, the Commission received a total of seven comments, four from creditor trade associations[2] and three from legal organizations representing consumers.[3] The commenters' responses to the questions posed in the notice are summarized and analyzed below. Unless otherwise noted, the Commission is not aware of other information bearing on the issues discussed.

*1. Continuing Need for the Rule*

Two commenters directly addressed the question of the continuing need for the Rule. The UAW–GM and NCLC stated that consumers continue to need the protection of the Rule. According to Williams & Eoannou, consumers have benefited from the Rule because it ''eliminated the use of a limited number of onerous and overreaching boilerplate contract provisions * * * the limited utility of which in collecting debts was more than offset by their brutally invasive and disruptive impact on consumers and their families.'' No commenter discussed any costs imposed on consumers by the Rule.

*2. Proposed Changes to the Rule to Benefit Consumers*

All of the commenters made some recommendation regarding changes to the Rule. Except as noted, the commenters who proposed changes to benefit consumers did not discuss the cost to creditors of those changes.

[1] See Credit Practices Rule: Statement of Basis and Purpose and Regulatory Analysis (SBP), 49 FR 7740, 7743–7745 (1984).

[2] Comments were received from the Credit Union National Association (''CUNA''), which represents 5,000 state and 7,000 federal credit unions in the United States; the CUNA Mutual Insurance Group (''CMIG''), which provides form contracts and compliance support, as well as insurance coverage, to CUNA members; the Illinois Credit Union System, which represents 645 state and federal credit unions in Illinois; and the Missouri Bankers Association, a trade association representing 500 commercial banks in Missouri.

[3] Comments were received from the National Consumer Law Center, Inc. (''NCLC''); the UAW–GM Legal Service Plan (''UAW–GM''), which provides legal services to auto workers and retirees; and the law firm of Williams & Eoannou, which represents consumer debtors in bankruptcy proceedings and in cases involving possible violations of federal and state credit laws.

a. Security Interests in Household Goods

i. Definition of Household Goods

One commenter, UAW–GM, stated that the Rule's definition of household goods is too limited. According to UAW–GM, consumers would be better protected and the law would be more consistent with other federal formulations if the definition of household goods under the Rule were changed to parallel the household goods exemption and lien-avoidance provisions of the Bankruptcy Code, 11 U.S.C. 552 (d)(3) and (f)(2).[4] The exemptions provided under the Bankruptcy Act include items not covered by the Rule, notably books, animals, crops, and musical instruments, but do not include the Rule's coverage of wedding rings and personal effects.

The Commission did not address this question directly at the time that it promulgated the Rule, but did indicate that it was aware of the lien-avoidance provision of the Bankruptcy Act. The SBP refers to the fact that 1978 amendments to the Bankruptcy Act created an exception to the old rule that secured loans survived bankruptcy for those loans secured by blanket security interests in household goods, 11 U.S.C. 552(f)(2), discussed above. The reference occurs in a discussion of the treatment of the refinancing of purchase money security interests and does not indicate that the Commission ever considered conforming the definition of household goods in the Rule to the definition contained in the Bankruptcy Act provision discussed.[5]

Since bankruptcy is one of the situations in which a creditor's security interest in the personal possessions of the debtor is most likely to be at issue, a consistent federal standard as to which items are protected is sensible. However, we have no evidence that the lack of such a parallel standard is sufficiently problematic to warrant amending the rule.

Alternatively, UAW–GM proposed that the list of specific items included in the definition be described as illustrative and not exclusive.[6] In the SBP, the Commission stated its intention to limit coverage to necessities and to the class of goods for which the injury to consumers from a security interest exceeds offsetting benefits.[7] Conceivably, the Rule could be expanded to apply to any other items meeting that test. However, this could raise certain enforcement difficulties. It is not clear that, if a creditor took a security interest in items not enumerated as household goods, the Commission could establish the requisite knowledge on the part of the creditor to bring a civil penalty action for a rule violation.[8] Again, we have no evidence of problems with the Rule's current definition of household goods sufficient to justify an amendment to the Rule.

ii. Property Insurance

The NCLC presumes that creditors take security interests in the consumer's personal property in order to sell excessively priced property insurance to the consumer and that the Rule should be amended to address this problem. The Truth in Lending Act and Regulation Z impose disclosure requirements relating to the sale of property insurance by creditors.[9] Given the legal restrictions on the Commission's ability to regulate the business of insurance, this agency may not have the authority to address the pricing of insurance directly or the expertise to determine what constitutes fair pricing.[10] We found no evidence to justify attempting to do so as an amendment to the Rule.

iii. Cross-Collateralization

Williams & Eoannou observed that the use of cross-collateral security clauses in revolving charge agreements is increasing. The commenter notes that the Rule as initially proposed would have prohibited such clauses, and that that provision was deleted from the final rule.[11] The Commission is urged by the commenter to amend the Rule to prohibit the use of cross-collateral.

The Commission did not adopt the provision initially because it found insufficient evidence in the record that the use of cross-collateral clauses was prevalent or that cross-collateral, when used, caused any notable degree of consumer injury. It, therefore, concluded that the benefits of the provision would not outweigh its costs.[12] As the comment did not provide specific information about the prevalence of cross-collateralization or the degree of injury resulting from its use, we find no basis for revising that conclusion.

b. Notice to Cosigners

Commenters addressed various aspects of the Rule's cosigner provision, which will be discussed in turn below.

i. Definition of Cosigner

UAW-GM stated that the cosigner definition should be clarified. The Rule defines a cosigner as a person who is ''liable for the obligation of another person without compensation.'' A person is considered not to have received compensation if that person does not receive goods, services, or money in return. According to the commenter, in connection with the financing of automobiles, the cosigner's name is sometimes placed on the title to the vehicle with the name of the purchaser in order to avoid the Rule's protections for cosigners.

The commenter states that this is done without the cosigner's knowledge in situations where the cosigner has no actual access to the vehicle securing the loan. The cosigner's name on the title suggests that he has received an ownership interest in the car in exchange for his commitment to pay and is, therefore, not a cosigner within the meaning of the Rule. According to UAW–GM, the Commission should amend the Rule to make clear that, in the absence of an actual possessory interest in the security, the Rule should apply.

At the time the Rule was promulgated, the Commission

---

[4] Those provisions of the Bankruptcy Act provide an exemption for:

The debtor's interest, not to exceed $200 in value in any particular item or $4,000 in aggregate value, in household furnishing, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for * * * personal, family, or household use. * * *

[5] See SBP at page 7767.

[6] In contrast, the Missouri Bankers Association stated that there should be no expansion of the definition of household goods and that any expansion would restrict the collateral that could be provided by consumers who are not homeowners.

[7] See SBP at pages 7767 and 7768.

[8] Section 5(m)(1)(A) of the FTC Act states that:

The Commission may commence a civil action to recover a civil penalty * * * against any person * * * which violates any rule under this Act respecting unfair or deceptive acts or practices * * * with *actual knowledge or knowledge fairly implied* on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. (Emphasis added.)

[9] Section 226.4 of Regulation Z, which implements the Truth in Lending Act, allows creditors to exclude such insurance premiums from the finance charge if the insurance coverage may be obtained from a person of the consumer's choice, if that fact is disclosed to the consumer, and if the coverage is obtained through the creditor, the insurance premium and the term of the insurance are disclosed.

[10] See McCarran-Ferguson Act, 15 U.S.C. 1012.

[11] According to the SBP:

Cross-collateralization occurs when goods purchased from a retailer on credit are used to secure credit extended for subsequent purchases until the account is cleared. A provision of the proposed rule that we have decided not to promulgate would have restricted cross-collateral clauses in installment sales contracts. Essentially, the provision would have required first-in, first-out accounting for credit contracts covering multiple purchases.

SBP, 49 FR 7740, 7786 (March 1, 1984).

[12] See SBP at page 7786.

considered comments stating that the cosigner provisions of the Rule could be avoided by requiring potential cosigners to become co-applicants for credit. In response, the Commission revised the final Rule to define as a cosigner ''any person whose signature is obtained after the initial applicant is told that the signature of another person is necessary.'' [13] The cosigner definition also states that:

> A person is a consigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.[14]

Thus, the Commission clearly intended that the definition of cosigner turn on the circumstances under which the person became obligated to pay rather than how the person is characterized by the creditor on the documents evidencing the transaction. Accordingly, the current Rule would apply to the situation described by the commenter.

In addition, the Rule currently states that it is a deceptive act or practice for a creditor, ''directly or indirectly, to misrepresent the nature of extent of cosigner liability to any person.''[15] Therefore, it should be possible to challenge creditor practices that seek to avoid the effect of the rule by concealing the cosigner's status. Such a challenge may be made using the existing provision without the necessity of amending the Rule.

ii. Cosigner Liability

UAW–GM also stated that the Rule should provide that a creditor cannot collect from a cosigner who was not given the required Notice. The commenter observed that the Federal Reserve Board (''FRB'') Staff Guidelines on that agency's version of the Rule [16] say that an attempt to collect from a cosigner who did not receive the Notice is a violation of the Rule.[17]

The SBP does not indicate that the Commission considered the question of the private enforceability of consumer credit contracts entered into in violation of the Rule. The FRB, which followed the Commission's lead, did consider this question, as did the Federal Home Loan Bank Board (''FHLBB'') [18]. Making a contract entered into in violation of the Rule unenforceable against the cosigner could potentially provide a private enforcement mechanism for consumers and give creditors an additional incentive to comply. However, the commenter provided no information about the actual experience of cosigners with creditors subject to the other regulatory agencies' versions of the Rule, including whether their versions effectively prevented violations or provided relief to consumers. Consequently, the Commission lacks sufficient information to decide that a proceeding to amend the Rule in such a manner is justified.

iii. The Notice as a Separate Document

The three credit union-related associations asked that the Rule be amended to permit creditors to include the Notice in the documents evidencing the consumer credit obligation rather than requiring that it be a separate document. The commenters noted that the versions of the Rule promulgated by the National Credit Union Administration (''NCUA''), the FRB, and the OTS do not require the notice to be on a separate document. While the commenters requested this change primarily for the benefit of creditors, the Illinois Credit Union System also expressed the view that consumers would be better served if they received a document that included both the Notice and the terms of the credit obligation.

In the SBP, the Commission explained its reason for requiring that the Notice be a separate document:

> The purpose of this requirement is to assure that the cosigner will actually become aware of the notice before becoming obligated. Thus, the notice document cannot be affixed to other documents unless the notice document appears before any other document in a package, and it may not include any other statement * * *.[19]

Thus, if the result of combining the Notice with the contract were to make the Notice's message less meaningful to the consumer, as the Commission believed, this benefit would come with a substantial cost to the consumer. On balance, and in the absence of information about the experience of cosigners with creditors subject to the other regulatory agencies' versions of the Rule, we have determined to retain the existing cosigner notice provision.

c. Other Rule Provisions

i. Third Party Contacts

The NCLC stated that many creditors continue to contact third parties in order to coerce consumers into paying debts. When the Rule was enacted, the Commission considered, but rejected, a provision to prohibit most creditor contacts with third parties.[20] The Commission stated that the record in the rulemaking proceeding did not contain evidence of widespread abusive third party contacts, that the cost of the provision would outweigh its benefits, and that the Commission considered a case-by-case approach more appropriate ''to stem abusive third party contacts without restricting legitimate contacts.''[21] We feel that this approach has been adequate to deter abusive third party contacts.[22]

ii. Attorney's Fees

The NCLC also stated that consumers who pay creditors' attorney's fees are routinely overcharged to subsidize the attorney's unsuccessful collection efforts against other consumers. The Commission considered, but rejected, a Rule provision prohibiting credit contract clauses requiring that debtors pay attorney's fees incurred by creditors in debt collection.[23]

The Commission expressed the view that, because the proposed Rule provision would not have restricted the power of courts to impose attorney's fees on defaulting consumers under state law, the provision might have had little effect. While the Commission found that most creditors included attorney's fee provisions in contracts when permitted to do so by state law, it found that the cost of restricting this practice outweighed the benefits of doing so. Although the Commission found that attorney's fees tend to be based on a percentage of the amount of the outstanding obligation, and sometimes bear little relation to the amount of work performed by the attorney, it stated specifically that this does not imply that debtors overcompensate creditors for their attorney's fees.[24] Thus the Commission previously rejected the premise of the NCLC comment. We have received no information in connection with this

[13] *Id.* at page 7778.

[14] 16 CFR 444.1(k).

[15] 16 CFR 444.3(a)(1).

[16] 50 FR 47,036 (1985) and 51 FR 39,646 (1986), Q14(a)-2.

[17] Section 18(f) of the Federal Trade Commission Act requires, within 60 days after the Commission issues a trade regulation rule declaring certain acts or practices to be unfair or deceptive, that the bank regulatory agencies issue a substantially similar rule for creditors subject to their jurisdiction unless the agencies find that the practices of their creditors are not unfair or deceptive or that to promulgate such a rule would ''seriously conflict with essential monetary and payment systems policies. . . .'' Accordingly, the FRB and other agencies issued their own versions of the Rule.

[18] The FHLBB is now the Office of Thrift Supervision (''OTS''), Department of the Treasury.

[19] SBP at page 7778.

[20] *Id.* at pages 7785–7786.

[21] *Id.*

[22] Since the Rule was enacted, the Commission has brought one case against a creditor for abusive third party contacts and other unfair or deceptive debt collection practices. *See Avco Fin. Serv.*, 104 F.T.C. 485 (1984) (Consent Agreement).

[23] *See* SBP at pages 7784–7785.

[24] *Id.*

review that would lead us to revise that position.

*3. Impact of the Rule on Creditors*

CUNA, the only creditor representative to discuss the subject, stated that ''Generally, credit unions have not reported any significant economic or regulatory impact on their operations due to this rule.''

*4. Proposed Changes to the Rule to Benefit Creditors*

The Missouri Bankers Association posited that the Rule provision prohibiting the pyramiding of late fees is not sufficiently clear as to what constitutes a late fee.[25] The Association questioned whether a returned check fee, for example, would be a late fee under the Rule, and, if so, whether the creditor would be permitted under the Rule to collect it.

This comment calls for an explanation of the Rule, rather than a modification to it.[26] The Rule does not prohibit a creditor from collecting a late fee, nor would it prohibit a creditor from collecting a returned check fee. The Rule states that, where a charge is assessed with respect to only one late payment and that charge remains unpaid, the creditor may not for that reason deem all subsequent payments to be late or incomplete and assess late charges with respect to those payments as well.

In the example provided by the commenter, if one check was returned for insufficient funds, the creditor could assess a returned check fee if permitted by state law and the terms of the contract to do so. What the creditor could not do, assuming the consumer did not promptly pay the returned check fee, is to declare all subsequent payments to be late or incomplete solely for that reason and assess fees on those payments.

*5. Effect on Other Regulations*

Except for the comparisons to the Federal Reserve Board and other agencies' versions of the Rule discussed above, no commenter discussed the Rule's effect on other federal, state or local laws or regulations.

*6. Effect of Technology or Economic Conditions*

No commenter discussed the effects, if any, of changes in relevant technology or economic conditions on the Rule.

*7., 8., and 9. Effect on Small Businesses*

According to CUNA, the Rule applies to 5,000 state-chartered credit unions.[27] CMIG states that the majority of those credit unions have assets of $100 million or less. Thus, they are considered to be small entities for the purposes of the RFA.[28] The only burden that the commenters who claim to represent such entities identified as having been imposed by the Rule on small entities was the requirement discussed above of providing the cosigner notice as a separate document.

*10. The Notice to Cosigner*

No commenter discussed the wording of the notice.

*11. Effect on the Cost and Availability of Credit*

As mentioned above, CUNA stated that its members generally reported no significant economic impact on their operations due to the Rule. Williams & Eoannou stated that the Rule has had no negative impact on the cost or availability of credit and that the use of credit by consumers has increased since the Rule became effective. NCLC provided statistics purporting to show the increase in consumer debt in the years following the Rule's implementation. In its view, this increase can be explained in part by increased consumer demand for what became, as a result of the Rule, a more attractive type of credit. No commenter suggested any adverse economic impact from the Rule.

*12. Disclosure Alternative to the Rule*

No commenter addressed the question of an alternative Rule that would require disclosure of the existence of contract provisions that might cause injury to consumers, as opposed to restricting the use of such provisions.

## III. Conclusion

The Notice attracted limited public interest. The discussion of issues relating to small entities, the parties protected by the RFA, was minimal. A number of varying suggestions were made to expand the Rule, but none of these had extensive support.

After carefully considering the comments, the Commission believes that they do not present a sufficient basis to conclude that the Rule has had a significant impact on a substantial number of small entities. Similarly, none of the other issues raised in the comments merits revision of the Rule at this time. The Commission is therefore terminating this review.

## List of Subjects in 16 CFR Part 444

Federal Trade Commission, Consumer credit contracts, Consigner disclosures, Trade practices, Truth in Lending.

**Authority:** The Regulatory Flexibility Act, 5 U.S.C. Section 601 (1980).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–11360 Filed 5–9–95; 8:45 am]

BILLING CODE 6750–01–M

[25] The three credit union-related associations asked that the Rule be amended to permit creditors to include the Notice in the documents evidencing the consumer credit obligation rather than requiring that it be a separate document, as discussed above.

[26] The Commission has handled inquiries of this nature through staff interpretation letters, which are placed on the public record. To date, more than 70 such letters interpreting the Rule have been issued.

[27] Federally-chartered credit unions are subject to the NCUA's version of the Rule.

[28] See Small Business Size Regulations, 13 CFR Part 121.601.

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 500, 582, and 589

**[Docket No. 94G–0239]**

## GRAS Status of Propylene Glycol; Exclusion of Use in Cat Food

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its regulations to exclude from generally recognized as safe (GRAS) status the use of propylene glycol (PG) in or on cat food. This proposed action is based on FDA's review of currently available information which has raised significant questions about the safety of this use. Semimoist pet foods containing PG were not in existence when the GRAS status for use in animal feeds was established, thus this GRAS determination does not apply to the newly intended uses of PG. FDA is proposing that PG in or on cat food is a food additive and is not prior sanctioned for this use, and subject to certain provisions of the Federal Food, Drug, and Cosmetic Act (the act).

**DATES:** Written comments by July 24, 1995.

**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:** David A. Dzanis, Center for Veterinary Medicine (HFV–222), Food and Drug

Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1728.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Propylene glycol has been used worldwide in the preparation of human foods, pet foods, pharmaceuticals, and cosmetics. It was first used in human foods in 1920, and in pet foods in the early 1960's. In pet foods, PG functions as a humectant, plasticizer, and microbiological preservative.

In the **Federal Register** of November 20, 1959 (24 FR 9368), the agency published a final rule establishing PG as generally recognized as safe (GRAS) in 21 CFR 121.101(h) as a general purpose food additive. PG's use in animal food and feed was recodified to 21 CFR 582.1666 in the **Federal Register** September 10, 1976 (41 FR 38618 at 38657).

In the **Federal Register** of June 17, 1977 (42 FR 30865), the agency proposed to affirm PG as GRAS as a direct and indirect human food ingredient. Subsequently, in the **Federal Register** of June 25, 1982 (47 FR 27810), a final rule was published affirming the GRAS status of PG. The agency's conclusions were based upon a review of scientific literature from 1920 to 1977. A total of 282 abstracts on the additive were reviewed and 68 particularly pertinent reports from the literature survey were summarized in a scientific literature review. The results of this scientific review were discussed in the June 17, 1977, document.

## II. Prior Sanction

A substance that is added to food is not a food additive if it is the subject of a prior sanction (section 201(s)(4) of the act (21 U.S.C. 321(s)(4)). ''Prior sanction'' means an explicit approval granted with respect to use of a substance in food prior to September 6, 1958, by FDA or the United States Department of Agriculture (USDA) pursuant to the act, the Poultry Products Inspection Act, or the Meat Inspection Act (21 CFR 570.3(1)). A prior sanction applies to the specific use of a substance in food, i.e., the level, condition, product, etc., for which there was explicit approval by FDA or USDA. Moreover, the existence of a prior sanction exempts the sanctioned use from the food additive provisions of the act but not from the other adulteration or the misbranding provisions of the act (see 21 CFR 181.5(a) and (b)).

If, at the time that FDA proposes to determine that a substance is not GRAS and is a food additive under 21 CFR 570.38, the agency is aware of any prior sanction for use of the substance, it will concurrently propose a separate regulation covering such use of the ingredient under part 582 (21 CFR part 582). If the agency is unaware of any such applicable prior sanction, the proposed regulation (as to the substances GRAS or food additive status) will so state and will require any person who intends to assert or rely on such sanction at any later time (21 CFR 570.38(d)).

FDA is not aware of any prior sanctions for the use of propylene glycol in or on cat food, that meet the criteria described above. No party has claimed a prior sanction for this use of propylene glycol in or on cat food. Accordingly, based on the information that is available to it, the agency concludes that no prior sanction exists for the use of propylene glycol in or on cat food.

## III. FDA's Concerns

Following review of a number of studies conducted since 1982 concerning the use of PG in cat food, the agency has concluded that there are significant questions about the safety of PG in cat food. In 1976, because the safety of PG was being questioned, the European Economic Community (EEC) initiated a review of additives used in pet foods. In response to this initiative, studies were funded by several pet food companies to verify the safety of PG in semimoist dog and cat foods (these studies include Ref. 1). Clinical tests included the measurement of a blood parameter called Heinz bodies, a test which had not been performed in previous PG studies. Heinz bodies are small clumps of denatured protein in the red blood cells. Cats offered food containing PG at levels used in semimoist food were found to develop Heinz bodies. Although Heinz bodies were known to be indicative of red blood cell damage, the studies did not provide evidence that PG caused anemia or other adverse clinical effects in cats.

Because of the questions raised by the European cat studies, a U.S. pet food industry research group (IRG), composed of interested pet food companies and PG manufacturers, was formed in early 1978. The IRG's purpose was to investigate the significance of linking PG and Heinz body formation, especially PG's effect on the health of the cat. In August 1978, representatives of the IRG met with FDA to provide the results of the EEC tests and describe the research being conducted to determine the significance of Heinz body formation. Since this first meeting, additional pertinent research data have been provided to FDA.

The results of the IRG studies were published in peer-reviewed scientific journals (Refs. 2 and 3). In the first study, adult cats were fed diets containing 0, 6, or 12 percent PG on a dry matter basis over a 16-week period. Cats fed PG had a dose-related increase in Heinz bodies, and a dose-related decrease in mean red blood cell survival time. In the 12 percent group, there was also an increase in punctate reticulocytes, and slight changes in the packed cell volume, hemoglobin concentration, and red blood cell counts. These results indicate that red blood cells are more susceptible to destruction due to PG. Periportal liver glycogen accumulation, splenic nodules, and heart and kidney lesions were observed in some of the cats in the 12 percent group, and the same splenic lesions were seen in some cats in the 6 percent group. In the second study, 12- to 14-week-old kittens were fed diets containing 0, 6, or 12 percent PG on a dry matter basis for 13 weeks. Findings followed a pattern similar to those of the adult cat study, but the increase in reticulocyte count and reduction in red blood cell lifespan were greater in kittens than in adults. This difference was attributed to higher consumption of PG on a per weight basis in kittens.

Other reports in the scientific literature confirmed and expanded on the IRG findings. In a retrospective study, a direct relationship between Heinz body formation and lower packed cell volumes and lower erythrocyte reduced glutathione concentrations were found in cats (Ref. 4). Another study found dose-dependent increases in Heinz body formation and decreases in red blood cell lifespans in cats fed diets containing 12 and 41 percent PG (Ref. 5). A dose-dependent increase in iron pigment in liver and splenic tissue was also observed. Cats fed 41 percent PG diets had a significantly lower mean packed cell volumes, a decreased mean erythrocyte reduced glutathione concentration, punctate reticulocytosis, and bone marrow erythroid hyperplasia. This suggests that although the bone marrow was attempting to compensate for increased red blood cell destruction, the marrow could not produce enough red blood cells to compensate for the rate of destruction.

Increased Heinz body formation and decreased red blood cell survival time were observed in kittens fed diets containing 5 or 10 percent PG for 12 weeks in a study by Hickman and others (Ref. 6). Purified experimental diets containing nitrate, histamine, histamine plus nitrate, or vitamin A failed to induce Heinz body formation. After cessation of treatment with PG-

containing diets, the Heinz body percentage returned to pretreatment levels in 6 to 8 weeks. Thus, PG was identified as the causative factor, and these other possible components of cat food were ruled out as causes of Heinz body formation. Another study found cats fed a commercial diet containing 8.3 percent PG were more susceptible to red blood cell oxidant stress from acetaminophen administration than cats fed a control diet (Ref. 7). Thus, acetaminophen, a common pain reliever for human use but poisonous to cats, was even more dangerous if cats were fed diets containing PG.

Despite the lack of overt clinical anemia in cats in these studies, the data establishes clearly that PG taxes the red blood cell production system. The lack of reports from the veterinary profession of clinically obvious consequences of PG ingestion is an inappropriate criterion to judge the safety of PG, as the indirect impacts of a toxicant are not often readily associated with the compound. FDA believes that cats consuming PG-containing diets would be less able to compensate for other oxidative stresses, such as those induced by infections, drugs, or toxins. Heinz bodies induced by PG may interfere with the proper diagnosis of diabetes mellitus, hyperthyroidism, lymphoma, and other diseases in cats associated with Heinz body formation. Consumption of PG-containing diets may also contribute to the severity of anemia from a variety of causes. Thus, FDA concludes that the findings of the studies of IRG and others constitute adverse effects on the health of cats.

Based on data derived from the FDA master file on PG, the no-observed-effect-level (NOEL) in cats with respect to Heinz body formation is 80 milligrams (mg) PG per kilogram (/kg) body weight (Ref. 1). Assuming typical consumption rates, this level translates to approximately 4,900 to 5,700 mg PG/kg food dry matter (0.49 to 0.57 percent dry matter) for adult, nonreproducing cats, and 0.135 to 0.16 percent dry matter for growing kittens. These levels are far below what has historically been used as a humectant in semimoist cat foods (6 percent to 13 percent dry matter). At levels below 3 percent, PG no longer has any technical or functional effect in the food as a humectant. Effects are seen in adult as well as growing animals. Thus, FDA cannot conclude that a limited use of PG, e.g., a reduced level of use, or a diet intended for certain lifestages of cats only is GRAS.

In 1992, FDA informed industry through a letter to the IRG of its concern regarding the safety of PG in cat foods. Subsequent to that action, the majority of cat food manufacturers removed PG from their formulations. However, a portion of the products on the market, including some imported products, continue to contain PG.

## IV. Conclusions

On the basis of the foregoing, the agency has concluded that PG is not GRAS as an ingredient of cat food nor is this use subject to a prior sanction. Under these circumstances PG is deemed to be a food additive, subject to section 409 of the act (21 U.S.C. 348), and its use in cat food must be in accordance with a published food additive regulation.

## V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

## VI. Analysis of Impacts

FDA has examined the impacts of this 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.

This assessment analyzes the economic effects of the proposed rule to exclude from GRAS status the use of PG in or on cat food. PG is used as a humectant, plasticizer, and microbiological preservative in semimoist cat food. Semimoist cat foods containing PG did not exist when the GRAS status for its use in animal feeds was established, and this GRAS determination does not apply to the newly intended use of PG. Currently available information on the effects of PG demonstrates serious concerns about its safety in cats.

FDA requested that pet food manufacturers discontinue the use of PG as an ingredient in semimoist cat foods in 1992. The majority of manufacturers in the industry have complied with this request. Agency experts estimate that PG is currently used in at most 5 percent of semimoist cat foods and at most 10 percent of cat snacks, which are similar in texture and content to semimoist foods. These usage rates continue to decline.

FDA estimates of 1993 sales of semimoist cat foods and snacks to U.S. households are $85,000,000 and $53,000,000, respectively (Neilsen Marketing Research data). Those sales representing semimoist cat foods and cat snacks which contain PG are approximately $9,550,000 (5 percent of $85,000,000 plus 10 percent of $53,000,000). The effect of the proposed rule would be to replace these sales with other cat foods and cat snacks not containing PG. Most of the industry has already substituted glycerin for PG in semimoist foods and snacks. It is likely that the remaining portion of the industry would make the substitution of glycerin for PG rather than surrender their share of the semimoist cat food and cat snack market. The cost of this substitution to the production process is expected to be small.

Purchases of PG by semimoist cat food and cat snack manufacturers represent a very small percentage of total PG sales, estimated at less than 1 percent. Demand for semimoist cat foods has declined considerably since 1987. Although demand for cat snacks continues to grow, its sales are still a small part of the total pet food industry. Thus, the effect of the proposed rule to PG manufacturers would also be small.

The effects of the proposed rule on small businesses would not be substantial. Although more small-sized companies are involved in manufacturing cat snack foods than in semimoist foods, their costs of compliance would not be significant.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. For the above reasons, 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.

## VII. References

The following references have been placed on display in the Dockets

Management Branch (address above) and may be seen by interested persons between 9 a.m. and 6 p.m., Monday through Friday.

1. Quast, J. F., C. G. Humiston, C. E. Wade, et al. Results of a Toxicology Study in Cats Fed Diets Containing Propylene Glycol for up to Three Months, *FDA Master File Report No. 12*, 1979.

2. Bauer, M. C., D. J. Weiss, V. Perman, ''Hematologic Alterations in Adult Cats Fed 6 or 12% Propylene Glycol,'' *American Journal of Veterinary Research*, 53:69–72, 1991.

3. Bauer, M. C., D. J. Weiss, V. Perman, ''Hematological Alterations in Kittens Induced by 6 and 12% Dietary Propylene Glycol,'' *Veterinary and Human Toxicology*, 34:127–130, 1992.

4. Christopher, M. M., ''Relation of Endogenous Heinz Bodies to Disease and Anemia in Cats: 120 Cases (1978–1987),'' *Journal of the American Veterinary Medical Association*, 194:1089–1095, 1989.

5. Christopher, M. M., V. Perman, J. W. Eaton, ''Contribution of Propylene Glycol-Induced Heinz Body Formation to Anemia in Cats,'' *Journal of the American Veterinary Medical Association*, 194:1045–1055, 1989.

6. Hickman, M. A., Q. R. Rogers, J. G. Morris, ''Effect of Diet on Heinz Body Formation in Kittens,'' *American Journal of Veterinary Research*, 50:475–478, 1990.

7. Weiss, D. J., C. B. McClay, M. M. Christopher, M. Murphy, V. Perman, ''Effects of Propylene Glycol-Containing Diets on Acetaminophen-Induced Methemoglobinemia in Cats,'' *Journal of the American Veterinary Medical Association*, 196:1816–1819, 1990.

## VIII. Comments

Interested persons may, on or before July 24, 1995, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

## List of Subjects

*21 CFR Part 500*

Animal drugs, Animal feeds, Cancer, Labeling, Polychlorinated biphenyl's (PCB's).

*21 CFR Parts 582 and 589*

Animal feeds, Animal foods, Food additives.

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 parts 500, 582, and 589 be amended as follows:

## PART 500—GENERAL

1. The authority citation for 21 CFR part 500 continues to read as follows:

**Authority**: Secs. 201, 301, 402, 403, 409, 501, 502, 503, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 351, 352, 353, 360b, 371).

2. New § 500.50 is added to subpart B to read as follows:

### § 500.50 Propylene glycol in or on cat food.

The Food and Drug Administration has determined that propylene glycol in or on cat food is not generally recognized as safe and is a food additive subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the act). The Food and Drug Administration also has determined that this use of propylene glycol is not prior sanctioned.

## PART 582—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR part 582 continues to read as follows:

**Authority**: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

4. Section 582.1666 is amended by revising paragraph (b) to read as follows:

### § 582.1666 Propylene glycol.

* * * * *

(b) *Conditions of use*. This substance is generally recognized as safe (except in cat food) when used in accordance with good manufacturing or feeding practice.

## PART 589—SUBSTANCES PROHIBITED FROM USE IN ANIMAL FOOD OR FEED

5. The authority citation for 21 CFR part 589 continues to read as follows:

**Authority**: Secs. 201, 402, 409, 701, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

6. New § 589.1001 is added to subpart B to read as follows:

### § 589.1001 Propylene glycol in or on cat food.

The Food and Drug Administration has determined that propylene glycol in or on cat food has not been shown by adequate scientific data to be safe for use. Use of propylene glycol in or on cat food causes the feed to be adulterated and in violation of the Federal Food, Drug, and Cosmetic Act (the act), in the absence of a regulation providing for its safe use as a food additive under section 409 of the act, unless it is subject to an effective notice of claimed investigational exemption for a food additive under § 570.17 of this chapter, or unless the substance is intended for use as a new animal drug and is subject to an approved application under section 512 of the act or an effective notice of claimed investigational exemption for a new animal drug under part 511 of this chapter.

Dated: May 2, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 95–11526 Filed 5–9–95; 8:45 am]

BILLING CODE 4160–01–F

---

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

**[IA–007–95]**

**RIN 1545–AT21**

## Authority of the Secretary of Agriculture to Share Employer Identification Numbers Collected From Retail Food Stores and Wholesale Food Concerns

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the authority of the Secretary of Agriculture to share employer identification numbers collected from retail food stores and wholesale food concerns with other agencies or instrumentalities of the United States. These proposed regulations reflect changes to the law made by section 316(b) of the Social Security Independence and Program Improvements Act of 1994 and affect retail food stores and wholesale food concerns.

**DATES:** Written comments and requests for a public hearing must be received by June 9, 1995.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:T:R (IA–007–95), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (IA–007–95), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Basso (202) 622–6232 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains proposed amendments to the Procedure and

Administration Regulations (26 CFR part 301) under section 6109(f) of the Internal Revenue Code of 1986, relating to access to employer identification numbers by the Secretary of Agriculture for purposes of the Food Stamp Act of 1977. Section 6109(f) was amended by section 316(b) of the Social Security Independence and Program Improvements Act of 1994 (Act), Public Law 103–296. These proposed regulations provide guidance on the changes made by the Act.

## Explanation of Provisions

Section 301.6109–2 currently permits the Secretary of Agriculture to require each applicant retail food store or wholesale food concern to furnish its employer identification number in connection with the administration of section 9 of the Food Stamp Act of 1977, Public Law 95–113, relating to the determination of the qualifications of applicant retail food stores and wholesale food concerns under the Food Stamp Act. These proposed regulations supplement the current regulation by permitting the Secretary of Agriculture to share the information with any other agency or instrumentality of the United States that otherwise has access to employer identification numbers. The Secretary of Agriculture may share the information to the extent that the Secretary of Agriculture determines such sharing would assist in verifying and matching the information against information maintained by the other agency or instrumentality. The other agency or instrumentality may use the information shared by the Secretary of Agriculture only for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for the purpose of investigation of violations of other Federal laws or enforcement of such laws.

Section 301.6109–2 currently restricts the type of individuals who have access to the employer identification numbers maintained by the Secretary of Agriculture, contains rules on the confidentiality and disclosure of employer identification numbers, and provides sanctions for unauthorized, willful disclosure of these numbers. The proposed regulations set forth similar rules for employer identification numbers that are shared with Federal agencies or instrumentalities other than the Department of Agriculture.

## Special Analyses

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

## Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Robert J. Basso, Office of the Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

## List of Subjects in 26 CFR Part 301

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

## Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

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

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

**Par. 2.** Section 301.6109–2 is amended by revising paragraphs (c) through (g) and adding paragraph (h).

The addition and revisions read as follows:

### § 301.6109–2 Authority of the Secretary of Agriculture to collect employer identification numbers for purposes of the Food Stamp Act of 1977.

* * * * *

(c) *Sharing of information*—(1) *Sharing permitted with certain United States agencies and instrumentalities.* The Secretary of Agriculture may share the information contained in the list described in paragraph (b) of this section with any other agency or instrumentality of the United States that otherwise has access to employer identification numbers, but only to the extent the Secretary of Agriculture determines sharing such information will assist in verifying and matching that information against information maintained by the other agency or instrumentality.

(2) *Restrictions on the use of shared information.* The information shared by the Secretary of Agriculture pursuant to this section may be used by any other agency or instrumentality of the United States only for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for the purpose of investigation of violations of other Federal laws or enforcement of those laws.

(d) *Safeguards*—(1) *Restrictions on access to employer identification numbers by individuals*—(i) *Numbers maintained by the Secretary of Agriculture.* The individuals who are permitted access to employer identification numbers obtained pursuant to paragraph (a) of this section and maintained by the Secretary of Agriculture are officers and employees of the United States whose duties or responsibilities require access to such employer identification numbers for the purpose of effective administration or enforcement of the Food Stamp Act of 1977 or for the purpose of sharing the information in accordance with paragraph (c) of this section.

(ii) *Numbers maintained by any other agency or instrumentality.* The individuals who are permitted access to employer identification numbers obtained pursuant to paragraph (c) of this section and maintained by any agency or instrumentality of the United States other than the Department of Agriculture are officers and employees of the United States whose duties or responsibilities require access to such employer identification numbers for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for the purpose of investigation of violations of other Federal laws or enforcement of those laws.

(2) *Other safeguards.* The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in paragraph (c) of this section, must provide for any additional safeguards that the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the employer identification numbers. The Secretary of Agriculture, and the head of any other

agency or instrumentality referred to in paragraph (c) of this section, may also provide for any additional safeguards to protect the confidentiality of employer identification numbers, provided these safeguards are consistent with safeguards determined by the Secretary of the Treasury to be necessary or appropriate.

(e) *Confidentiality and disclosure of employer identification numbers.* Employer identification numbers obtained pursuant to paragraph (a) or paragraph (c) of this section are confidential. No officer or employee of the United States who has or had access to any such employer identification number may disclose that number in any manner to an individual not described in paragraph (d) of this section. For purposes of this paragraph (e), *officer or employee* includes a former officer or employee.

(f) *Sanctions*—(1) *Unauthorized, willful disclosure of employer identification numbers.* Sections 7213(a)(1), (2), and (3) apply with respect to the unauthorized, willful disclosure to any person of employer identification numbers that are maintained pursuant to this section by the Secretary of Agriculture, or any other agency or instrumentality with which information is shared pursuant to paragraph (c) of this section, in the same manner and to the same extent as sections 7213(a)(1), (2), and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections.

(2) *Willful solicitation of employer identification numbers.* Section 7213(a)(4) applies with respect to the willful offer of any item of material value in exchange for any employer identification number maintained pursuant to this section by the Secretary of Agriculture, or any other agency or instrumentality with which information is shared pursuant to paragraph (c) of this section, in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section.

(g) *Delegation.* All references in this section to the Secretary of Agriculture are references to the Secretary of Agriculture or his or her delegate.

(h) *Effective date.* Except as provided in the following sentence, this section is effective on February 1, 1992. Any provisions relating to the sharing of information by the Secretary of Agriculture with any other agency or instrumentality of the United States are effective on August 15, 1994.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

[FR Doc. 95–11404 Filed 5–9–95; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 301

**[Notice 95–14]**

## Simplification of Entity Classification Rules; Hearing

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on regulations.

**SUMMARY:** This document provides notice of a public hearing on simplifying the classification regulations (26 CFR part 301) to allow taxpayers to treat domestic unincorporated business organizations as partnerships or as associations on an elective basis.

**DATES:** The public hearing will be held on Thursday, July 20, 1995, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Thursday, July 6, 1995.

**ADDRESSES:** The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R [Notice 95–14], room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing pertain to section 7701(a)(2) of the Internal Revenue Code which defines a partnership to include a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not a trust or estate or a corporation. This notice appeared in the Internal Revenue Bulletin for Monday, April 3, 1995, I.R.S. Notice 95–14, 1995–14 I.R.B. 7. This document is made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The rules of § 601.601 (a)(3) of the ''Statement of Procedural Rules'' (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice and who also desire to present oral comments at the hearing on the regulations should submit not later than Thursday, July 6, 1995, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 95–11414 Filed 5–9–95; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[KY–84–6856; FRL–5205–2]**

## Control Strategy: Ozone ($O_3$); Kentucky

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve an exemption from the oxides of nitrogen ($NO_X$) reasonably available control technology (RACT) and the general conformity requirements of the Clean Air Act as amended in 1990 (CAA) for the Kentucky portion of the Cincinnati moderate ozone ($O_3$) nonattainment area. The request for a $NO_X$ RACT exemption was submitted on November 11, 1994, by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet). The $NO_X$ RACT exemption request is based upon the most recent

three years of monitoring data, which demonstrate that additional reductions of $NO_X$ would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS).

**DATES:** Comments on this proposed action must be received in writing by June 9, 1995.

**ADDRESSES:** Written comments should be addressed to: Scott Southwick; Stationary Source Planning Unit, Regulatory Planning and Development Section; Air Programs Branch; Air, Pesticides, and Toxics Management Division; U.S. Environmental Protection Agency, Region 4; 345 Courtland Street NE., Atlanta, Georgia 30365.

A copy of the exemption request is available for inspection at the following locations (it is recommended that you contact Scott Southwick at (404) 347–3555 extension 4207 before visiting the Region 4 office).

United States Environmental Protection Agency; Air, Pesticides, and Toxics Management Division, Air Programs Branch, Regulatory Planning and Development Section; Stationary Source Planning Unit, 345 Courtland Street NE., Atlanta, Georgia 30365.

Department for Environmental Protection Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane Frankfort, Kentucky 40601.

**FOR FURTHER INFORMATION CONTACT:** Scott Southwick, Stationary Source Planning Unit, Regulatory Planning and Development Section, Air Programs Branch; Air Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. Reference file KY–84–6856. (404) 347–3555 ext. 4207.

**SUPPLEMENTARY INFORMATION:** The air quality planning requirements for the reduction of $NO_X$ emissions are set out in section 182(f) of the CAA, which requires states with nonattainment areas of moderate and above to require the same provisions for major stationary sources of $NO_X$ as apply to major stationary sources of volatile organic compounds (VOCs). One of the requirements of major sources of VOCs is RACT. Therefore, per section 182 of the CAA, RACT is also a requirement for major sources of $NO_X$. However, under section 182(f)(1)(A) of the CAA, an exemption from $NO_X$ requirements may be granted for nonattainment areas outside an ozone transport region if additional reductions of $NO_X$ would not contribute to attainment. The $NO_X$ RACT exemption request is based upon the most recent three years of monitoring data, which demonstrate that additional reductions of $NO_X$ would not contribute to attainment of the National Ambient Air Quality Standards (NAAQS). Additionally, if EPA grants such an exemption, $NO_X$ general conformity will not apply as stated in EPA's conformity rules (58 FR 63214, and 59 FR 31238).

The criteria established for the evaluation of an $NO_X$ RACT exemption request from the section 182(f) requirements are set forth in an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated May 27, 1994, entitled, ''Section 182(f) Nitrogen Oxides ($NO_X$) Exemptions—Revised Process and Criteria,'' an EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated December 16, 1993, entitled, ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements Under Section 182(f),'' dated December 16, 1993; and a EPA memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, dated February 8, 1995, entitled, ''Section 182(f) Nitrogen Oxides ($NO_X$) Exemptions—Revised Process and Criteria.'' The February 8, 1995, memorandum referenced above decouples the section 182(f) exemptions from $NO_X$ transport issues. In an area that did not implement the section 182(f) $NO_X$ requirements, but did attain the $O_3$ standard as demonstrated by ambient air monitoring data (consistent with 40 CFR Part 58 and recorded in the EPA's Aerometric Information Retrieval system (AIRS)), it is clear that the additional $NO_X$ reductions required by section 182(f) would not contribute to attainment of the NAAQS in that area.

On November 11, 1994, the Commonwealth of Kentucky submitted to EPA Region 4 a request to redesignate the Kentucky portion of the Cincinnati moderate $O_3$ nonattainment area to attainment. The redesignation request is currently under review and will be addressed in a separate rulemaking. On the same date the Commonwealth requested that the Kentucky portion of the Cincinnati area be exempt from the $NO_X$ RACT requirement in section 182(f) of the CAA. The exemption request is based upon ambient air monitoring data from 1992, 1993, and 1994. There are eleven monitors measuring $O_3$ concentrations in the Cincinnati nonattainment area. EPA has reviewed the ambient air monitoring data for the eleven monitors (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) submitted by the Commonwealth of Kentucky in support of the exemption request.

EPA has found that one monitor in Warren County has had two exceedances in 1994. However, EPA has determined that all monitors in the nonattainment area have an expected exceedance rate of less than 1.1 per year. Therefore, this area is meeting the $O_3$ NAAQS standard in the entire Cincinnati area for the relevant three year period. Because the Cincinnati area is meeting the $O_3$ NAAQS, this exemption request for the area meets the applicable requirements contained in the EPA policy and guidance documents referenced above. On January 17, 1995, EPA proposed approval of Ohio's request for exemption from the $NO_X$ requirements for the Ohio portion of this nonattainment area (60 FR 3361).

Upon the redesignation of this area to attainment for $O_3$, $NO_X$ RACT would become a contingency measure within the approved maintenance plan for the area. While the area is still designated nonattainment, the continuation of the section 182(f) exemption granted herein is contingent upon continued monitoring and continued maintenance of the $O_3$ NAAQS in the entire Cincinnati nonattainment area. If there is a violation of the $O_3$ NAAQS in any portion of the Cincinnati nonattainment area, the exemption will no longer be applicable as of the date of any such determination. Should this occur, EPA will provide notice in the **Federal Register**. A determination that the $NO_X$ exemption no longer applies would mean that $NO_X$ RACT and $NO_X$ general conformity requirements would immediately be applicable to the affected area. EPA believes some reasonable period of notice is necessary to provide major stationary sources subject to the RACT requirements time to purchase, install, and operate any required controls. Accordingly, the Commonwealth may provide sources a reasonable time period to meet the RACT emission limits after the EPA determination that $NO_X$ RACT requirements are necessary. EPA expects the time period to be as expeditious as practicable, but in no case longer than 24 months.

## Proposed Action

EPA is proposing approval of Kentucky's request to exempt the Kentucky portion of the Cincinnati moderate $O_3$ nonattainment area from the section 182(f) $NO_X$ RACT requirement. In addition, EPA is proposing to exempt Kentucky from $NO_X$ general conformity requirements. This proposed approval is based upon the evidence provided by Kentucky

showing compliance with the requirements outlined in the CAA and in applicable EPA guidance. If a violation of the $O_3$ NAAQS occurs in any portion of the Cincinnati area while the area is designated nonattainment, the exemption from the $NO_X$ RACT and $NO_X$ general conformity requirements of section 182(f) of the CAA in the applicable area shall no longer apply.

This action is not a SIP revision and is not subject to the requirements of section 110 of the CAA. The authority to approve or disapprove exemptions from $NO_X$ requirements under section 182 of the CAA was delegated to the Regional Administrator from the Administrator in a memo dated July 6, 1994, from Jonathan Cannon, Assistant Administrator, to the Administrator, titled, ''Proposed Delegation of Authority: 'Exemptions from Nitrogen Oxide Requirements Under Clean Air Act section 182(f) and Related Provisions of the Transportation and General Conformity Rules' Decision Memorandum.''

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. This rule approves an exemption from a CAA requirement. Therefore, I certify that it does not have a significant impact on any small entities affected.

**Unfunded Mandates**

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being proposed for approval by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this proposed action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

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

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 24, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 95–11504 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–P

---

## 40 CFR Parts 185 and 186

**[FAP 9H5587/P614; FRL–4950–6]**

**RIN 2070–AC18**

## Tralomethrin; Food and Feed Additive Regulations

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to establish time-limited food and feed additive regulations for residues of the synthetic pyrethroid tralomethrin in or on the processed commodity tomato puree and the animal feed tomato pomace, wet and dry. AgrEvo USA Co. (formerly Hoechst Roussel Agri-Vet Co.) requested these regulations pursuant to the Federal Food, Drug and Cosmetic Act (FFDCA) that would establish the maximum permissible levels for residues of the pesticide in or on the processed food commodity and animal feed.

**DATES:** Comments, identified by the document control number [PP 9H5587/P614], must be received on or before June 9, 1995.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall Building #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment 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 in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [FAP 9H5587/P614]. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100; e-mail: larocca.george@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** On June 13, 1989, Hoechst-Roussel Agri-Vet Co. submitted pursuant to section 409 of the FFDCA, 21 U.S.C. 348, food/feed additive petition (FAP) 9H5587 proposing to amend 40 CFR 185.5450 and 40 CFR part 186 by establishing time-limited food/feed additive regulations to permit residues of the insecticide tralomethrin, (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate, and its metabolites in or on the processed commodity tomato puree at 1.00 part per million (ppm) and the animal feed tomato pomace, wet and dry, at 1.50 ppm and 4.00 ppm, respectively.

Based on information furnished by AgrEvo USA Co., an experimental use

permit (EUP) under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 983), will be issued concurrently with the establishment of this food/feed additive regulation. The permit authorizes the use of 33 gallons of tralomethrin for 1 year in California, Florida, Georgia, New Jersey, Maryland, Ohio, Pennsylvania, and Texas for the evaluation of insect control on tomatoes. Also, a pesticide petition, 9G3774, has been submitted pursuant to section 408(d) of the FFDCA to amend 40 CFR 180.422 to establish temporary tolerances which allow a maximum permissible level for residues of tralomethrin in or on certain raw agricultural commodities (RAC's): tomato at 0.20 ppm; fat, meat, and meat byproducts of cattle, goats, hogs, horses, sheep at 0.10 ppm, 0.01 ppm, and 0.01 ppm, respectively; and milk at 0.02 ppm. The raw agricultural commodities (RAC's) regulation will be established concurrently with the food/feed additive regulation.

The data submitted in support of these tolerances and other relevant material have been evaluated. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Register** of September 18, 1985 (50 FR 37581). In addition, mutagenicity studies were submitted and considered in support of these tolerances. Based on the studies submitted (an unscheduled DNA synthesis study in rat primary hepatocytes and a chromosome aberration study in Chinese hamster ovary cells), tralomethrin is not considered mutagenic.

A dietary exposure/risk assessment was performed for tralomethrin using a Reference Dose (RfD) of 0.0075 mg/kg bwt/day, based on a no-observed-effect level (NOEL) of 0.75 mg/kg bwt/day and an uncertainty factor of 100. The NOEL was determined in a 2-year rat feeding study. The end-point effect of concern was decreased body weight. The Theoretical Maximum Residue Contribution (TMRC) from established tolerances utilizes less than 1% of the RfD for the U.S. population or 18% of the RfD if the new tolerances are granted. Established tolerances utilize 1% of the RfD for nonnursing infants less than 1-year old or 26% of the RfD if the new tolerances are granted. Established tolerances utilize less than 1% of the RfD for children (age 1 to 6 years), the subgroup with the highest estimated exposure to tralomethrin residues or 39% of the RfD if the new tolerances are granted. Generally speaking, EPA has no cause for concern if total residue contribution for published and proposed tolerances is less than the RfD.

The nature of the residue in tomatoes and ruminants is adequately understood for the establishment of a time-limited tolerance. An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency 401 M St., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

There are currently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the time-limited tolerances established by amending 40 CFR parts 185 and 186 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 409 of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, PP 9H5587/P614. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this rulemaking under docket number [FAP 9H5587/P614] (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:
opp-Docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in the **ADDRESSES** section above in this document.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines ''significant'' as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known 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 (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, 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 Parts 185 and 186**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 28, 1995.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR parts 185 and 186 be amended as follows:

## PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 348.

b. By revising § 185.5450, to read as follows:

**§ 185.5450 Tralomethrin.**

(a) A time-limited food additive regulation is established for the combined residues of the insecticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinly)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodities when present as a result of application of the insecticide to the growing crops:

| Commodity | Parts per million | Expiration date |
|---|---|---|
| Cottonseed oil ... | 0.20 | Nov. 15, 1997. |

(b) A time-limited food additive regulation is established permitting residues of the pesticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinly)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following food commodity resulting from application of the insecticide to tomatoes in accordance with an experimental program (34147-EUP-2). The conditions set forth in this section shall be met.

| Commodity | Parts per million | Expiration date |
|---|---|---|
| Tomato puree ..... | 1.00 | June 1, 1997. |

(1) Residues in the food not in excess of the established tolerance resulting from the use described in paragraph (b) of this section remaining after expiration of the experimental program will not be considered to be actionable if the insecticide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(2) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

## PART 186—[AMENDED]

1. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 348.

2. By adding new § 186.5450, to read as follows:

**§ 186.5450 Tralomethrin.**

(a) A time-limited feed additive regulation is established permitting residues of tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl]-cyclopropanecarboxylate; CAS Reg. No. 66841-25-6) and its metabolites (*S*)-*alpha*-cyano-3-phenoxybenzyl (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate and (*S*)-*alpha*-cyano-3-phenoxybenzyl(1*S*,3*R*)-3-(2,2-dibromovinly)-2,2-dimethylcyclopropanecarboxylate calculated as the parent in or on the following feed resulting from application of the insecticide to tomatoes in accordance with an experimental program (34147-EUP-2). The conditions set forth in this section shall be met.

| Feed | Parts per million | Expiration date |
|---|---|---|
| Tomato pomace, wet. | 1.50 | June 1, 1997. |
| Tomato pomace, dry. | 4.00 | June 1, 1997. |

(b) Residues in the feed not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental program will not be considered to be actionable if the insecticide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(c) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 95–11386 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 25

**[IB Docket No. 95–41; FCC 95–146]**

### Fixed Satellite Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is hereby proposing rules that would eliminate the distinction between our Transborder Policy and Separate International Satellite Systems (Separate Systems) Policy and to treat all U.S.-licensed geostationary fixed-satellites under a single regulatory scheme. Our action is in response to applications from

domestic and international satellite system operators for authority to provide both domestic and international services. In addition, the Executive Branch has recommended that all U.S.-licensed fixed-satellites be subject to the same regulatory scheme. Permitting U.S. operators to provide the widest range of service offerings technically feasible will allow them to use their satellites more efficiently and to provide innovative and customer-tailored services.

**DATES:** Comments must be submitted on or before June 8, 1995 and reply comments must be submitted on or before June 23, 1995.

**ADDRESSES:** Comments and reply comments should be submitted to Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** John M. Coles, Attorney, Satellite Policy Branch, International Bureau (202) 739–0731.

**SUPPLEMENTARY INFORMATION:**

## Notice of Proposed Rulemaking

Adopted: April 5, 1995.
Released: April 25, 1995.

By the Commission:

1. The Commission is hereby proposing rules that would eliminate the distinction between our Transborder Policy and Separate International Satellite Systems (Separate Systems) Policy and to treat all U.S.-licensed geostationary fixed-satellites under a single regulatory scheme.

## II. Background

2. The Transborder and Separate Systems Policies both involve the use of non-Intelsat satellites for the provision of international services. Both policies are based on the Communications Satellite Act of 1962 (''Satellite Act'') which provides for U.S. participation in the global commercial communications satellite organization that became Intelsat, but also specifically provides that additional satellite systems may be authorized if ''required to meet unique governmental needs or if otherwise required in the national interest.'' [1] The Transborder and Separate Systems Policies evolved from these general principles at different times and in response to different circumstances.

### *A. Transborder Policy*

3. The Transborder Policy was established in 1981 and permits domestic fixed-satellite operators (''domsats'') to provide international public telecommunications services within the coverage areas (''footprints'') of their satellites where: (1) Intelsat cannot provide the service; or (2) it would be clearly uneconomical or impractical to use Intelsat facilities.[2] Most of the applications approved for transborder services have involved instances where use of the Intelsat system would be clearly uneconomical or impractical, i.e. use of Intelsat facilities would require multiple satellite hops, terrestrial facilities, and co-located domestic and international earth stations, which would significantly increase the cost of providing the service.[3] Typically, services authorized under the uneconomical or impractical standard have been characterized as ''incidental'' to domestic services already being provided.

4. U.S. domsats have provided more extensive services (i.e., point-to-point and two-way services) between the U.S. and Mexico and between the U.S. and Canada because Intelsat has not traditionally provided service between the U.S. and these points. Thus, a wider range of services was permitted between the U.S. and contiguous locations (*i.e.*, Canada and Mexico) than between the U.S. and non-contiguous locations.

5. Another significant feature of the Transborder Policy is that it does not prohibit voice services through the public switched network (''PSN''), as did our Separate Systems Policy initially. Until recent modifications in the Separate Systems Policy permitting interconnection with the PSN, the ability of domsats to provide public switched services under the Transborder Policy was the main distinguishing feature between the two policies.

### *B. Separate Systems Policy*

6. The Separate Systems Policy was established in response to a 1984 Presidential Determination that satellite systems separate from Intelsat, providing service between the U.S. and international points, ''are required in the national interest.'' [4] In response to the Presidential Determination, the Secretaries of State and Commerce jointly advised the Commission to authorize separate systems provided that (1) each system be restricted to providing services through the sale or long-term lease of capacity for communications not interconnected with public switched message networks (except for emergency restoration service); [5] and (2) each system gain approval from the foreign authority with which communications links are being established and enter into consultation procedures in accordance with Article XIV(d) of the Intelsat Agreement to ensure technical compatibility and to avoid significant economic harm to Intelsat.[6]

7. In 1985, we authorized several applicants to build separate satellite systems to provide international public telecommunications services under these condition.[7] Since many of the orbital positions requested by separate systems applicants were deemed to be critical, limited resources for the provision of particular international services, we decided we would not permit separate systems operators to divert this capacity for domestic communications. However, we decided that separate system licensees could provide domestic service within the U.S. on an ''ancillary'' basis, which permits licensees to use their separate system facilities for domestic communications that are reasonably related to their use of the facilities for international communications. This was intended to accommodate those international customers who have limited domestic communications needs related to their international uses.

### *C. Recent Developments*

8. Since we first began to license separate systems, Intelsat has continued to evaluate the risk of economic harm posed by these systems and has concluded that the provision of limited switched services over systems consulted under Article XIV(d) would

[1] See 47 U.S.C. 701(d). Additionally, Congress has declared it to be U.S. policy ''to make available to consumers a variety of communications satellite services utilizing the space segment facilities of Intelsat and any additional such facilities which are found to be in the national interest'' and which are technically compatible with and avoid significant economic harm to the Intelsat system. Pub. L. 99–93, 99 Stat. 425 (1985) (quoted in Historical and Statutory Notes to 47 U.S.C.A. 701).

[2] Letter from James L. Buckley, Under Secretary of State for Security Assistance, Science and Technology, to F.C.C. Chairman Mark Fowler (July 23, 1981) (''Buckley Letter'') (printed in Appendix to Transborder Satellite Video Services, 88 F.C.C.2d 258, 287 (1981)).

[3] *Id.* at 280.

[4] Presidential Determination No. 85–2 (Nov. 28, 1984), 49 F.R. 46,987. The Separate Systems Policy is written into law as part of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. 99–93, section 146(g), 99 Stat. at 426.

[5] At the time, the restriction against interconnection with the PSN was deemed necessary to protect the core revenue base of Intelsat which consisted of switched voice and other services.

[6] Letter from George P. Shultz, Secretary of State, and Malcolm Baldridge, Secretary of Commerce, to F.C.C. Chairman Mark S. Fowler (Nov. 28, 1984).

[7] Establishment of Satellite Systems Providing International Communications, 50 FR 42266 (1985) (''*Separate Systems Dicision*''), *recon*., 61 RR2d 649 (1986), *further recon*., 1 F.C.C. Rcd 439 (1986).

not cause it significant economic harm.[8] The Executive Branch advised us to modify our Separate Systems Policy accordingly. The cumulative effect of these modifications is a phased relaxation of the restrictions against interconnection with the PSN—from no circuits in 1985 to 8,000 circuits today—with a goal of complete elimination of all interconnection restrictions by January 1997.[9]

9. The Executive Branch has also notified the Commission that the conditions identified in the Buckley Letter should be replaced by the Separate System Policy.[10] In addition, we have received applications from domestic and international satellite system licensees for authority to provide a full range of both domestic and international services.

## Discussion

10. We propose to eliminate the transborder policy in its entirety and to subject all U.S.-licensed geostationary satellite to a modified version of the separate systems policy. Under the new policy, all such satellites would be able to offer domestic services and any international services they can successfully coordinate internationally. These changes would allow major U.S. corporations to meet their increasingly global communications needs without the delays and uncertainties associated with the current policy of waiving parts of the transborder or separate systems policies on a case-by-case basis.

11. We tentatively conclude that permitting U.S. operators to provide the widest range of service offerings technically feasible and consulted by Intelsat will permit them to use their satellites more efficiently and to provide innovative and customer-tailored services. Domsat licensees will be able to provide these international services without regard to whether these services are incidental to an existing domestic network or whether Intelsat could provide the service. consequently, subject to the approval of the affected foreign country and successful consultation with Intelsat and ITU [11] coordination with other administrations with satellite systems that may be affected, domsats would be able to provide services between the U.S. and non-contiguous points on the same basis as separate systems.[12] In order to ensure that domsats and separate systems are subject to the same regulatory scheme, we also propose removing the limitation that separate systems may only provide domestic service on an ''ancillary'' basis.

12. We do not expect the proposed policy changes to result in harm to Intelsat. Intelsat has consulted more and more international services over U.S. separate satellites, suggesting that these services have not harmed it economically or technically.

13. We also request comment on whether the proposed policy changes should apply to other U.S. satellite systems, such as mobile-satellite service and direct broadcast service systems; whether Comsat, a U.S. licensee, should be permitted to provide domestic service using intelsat facilities; and whether and under what conditions non-U.S. satellites should be permitted to serve the U.S. Domestic market.

14. The proposed policy changes will require certain changes to Part 25 of our rules. Initially, we propose to eliminate all references to ''transborder'', ''domestic'', ''separate'' and ''international'' satellite systems. These references are found in §§ 25.110(b), 25.113 (b) and (d), 25.114(c), 25.115(c), 25.117(a), 25.130(d), 25.131(b), (g) and (j), 25.140 (a) and (b), 25.202(c), 25.210 (e), (f) and (j), 25.211(b) and 25.276(c). We also propose to reconcile differences in the financial qualification requirements for domsats and separate systems, allow all U.S.-licensed satellite system operators to elect whether they will operate on a common carrier or non-common carrier basis, and make modifications to our earth station licensing procedures. Finally, because the recent changes to Part 25 require separate system operators to meet the same technical standards as domsat operators, we proposed to eliminate § 25.210(f) which permits exceptions to the technical requirements in accordance with the *Separate Systems Decision*.

15. We also invite all interested parties to comment on any other issues raised by the proposed changes, including considerations as to how the proposed changes will affect orbital assignments, 2° orbital spacing between U.S. satellites in the geostationary orbit, the need to reopen coordination with satellite systems from other countries, and whether any special requirements should be placed on satellite operators providing both domestic and international service.

## Ex Parte Rules—Non-Restricted Proceeding

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 Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

## Initial Regulatory Flexibility Act

### *A. Reason for Action*

This rulemaking proceeding is initiated to obtain comment regarding proposed elimination of the Commission's Transborder Policy and removal of certain restrictions on separate international satellite systems with respect to domestic services in order to subject all U.S.-licensed fixed-satellites to the same regulatory treatment.

### *B. Objectives*

The Commission seeks to subject all U.S.-licensed fixed-satellites to the same regulatory policy.

### *C. Legal Basis*

The proposed action is authorized under Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303(r), and

[8] Most recently, the Nineteenth Assembly of Parties of Intelsat determined that the interconnection of up to 8,000 64-kbps equivalent circuits via each separate system satellite would not cause significant economic harm to the Intelsat system. The Executive Branch has not yet notified the Commission that the Separate Systems Policy should be modified accordingly.

[9] See Letter from Thomas J. Murrin, Deputy Secretary of Commerce, and Lawrence S. Eagleburger, Deputy Secretary of State, to F.C.C. Chairman Alfred C. Sikes (December 14, 1990)(100 64–kbps circuits consistent with U.S. obligations). Letter from James Baker, Secretary of State, and Robert Mosbacher, Secretary of Commerce, to F.C.C. Chairman Sikes (November 27, 1991) (interconnection of private lines to the PSN consistent with U.S. obligations and U.S. goal of complete elimination of PSN interconnection restrictions by January 1997). Letter from Bradley P. Holmes, United States Coordinator for International Communications and Information Policy, Department of State, and Gregory L. Chapados, Assistant Secretary, Department of Commerce, to F.C.C. Chairman Sikes (January 8, 1993)(1,250 64-kbps circuits consistent with U.S. obligations). See also Permissible Services of U.S. Licensed International Communications Satellite Systems Separate from the International Telecommunications Satellite Organization (Intelsat), 7 F.C.C. Rcd 2313 (1992), *further modification*, 9 F.C.C. Rcd 347 (1994); alpha Lyracom d/b/a Pan American Satellite, el at., 9 F.C.C. Rcd 1282 (1994) (''*PAS Modification Order*'').

[10] Letter from Bradley P. Holmes, United States Coordinator for International Communications and Information Policy, Department of State, and Gregory L. Chapados, Assistant Secretary for Communications and Information, Department of Commerce, to F.C.C. Chairman Alfred C. Sikes (January 8, 1993).

[11] The ITU (International Telecommunications Union) is a specialized agency of the United States Nations whose goal is to promote international cooperation in the efficient use of telecommunications, including the use of the radio frequency spectrum.

[12] /Any domsat operators that need to change the technical parameters of their proposed or authorized satellites in order to provide co-primary international service must file a request to amend the application or modify the license under Part 25 procedures. 47 CFR Part 25.

Section 201 of the Communications Satellite Act of 1962, 47 U.S.C. 721(c).

*D. Reporting, Recordkeeping and Other Compliance Requirements*

The proposed policy changes will not create additional burdens on the public.

*E. Federal Rules That Overlap, Duplicate or Conflict With These Rules*

None.

*F. Description, Potential Impact, and Number of Small Entities Involved*

The proposed policy changes discussed in this Notice of Proposed Rulemaking will enhance service options and price competition for any small businesses involved in the provision of international telecommunications services via U.S.-licensed satellites.

*G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives*

The Notice solicits comment on proposed policy changes necessary to achieve Commission objectives. Any significant alternatives may be set forth in comments to this Notice.

**Comment Dates**

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 8, 1995 and reply comments on or before June 23, 1995. To file formally in this proceeding, you must file an original and four 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 F.C.C. Reference Center (Room 239) of the Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

**Ordering Clauses**

16. Accordingly, *it is ordered* That NOTICE IS HEREBY GIVEN of the proposed regulatory action described above and that COMMENT IS SOUGHT on the proposals in this Notice.

17. This action is taken pursuant to Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303(r), and Section 201(c) of the Communications Satellite Act of 1962, 47 U.S.C. 721(c).

18. For further information on this Notice contact John M. Coles, Attorney, (202) 739–0731.

**List of Subjects in 47 CFR Part 25**

Communications common carriers, Radio, Satellites.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95–11286 Filed 5–9–95; 8:45 am]

BILLING CODE 6712–01–M

---

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 49 CFR Part 383

**[FHWA Docket No. MC–95–16]**

## Commercial Driver's License; Waiver for Pyrotechnics Industry; Request for Comments

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of petition; request for comment.

**SUMMARY:** The FHWA is requesting public comment on a petition submitted by the pyrotechnics industry on March 6, 1995, for relief from the requirements of the commercial driver's license regulations (CDL) (49 CFR Part 383). The FHWA is proposing to authorize waivers for certain drivers transporting fireworks to displays during the period of Independence Day celebrations from the CDL testing and licensing standards. The drivers to be covered by these waivers are part-time drivers who have an otherwise valid driver's license, as well as licenses or permits issued by applicable State or local agencies certifying that they are approved pyrotechnic operators. A waiver issued by a State under this proposal would only authorize the transportation of less than 500 pounds of fireworks classified as DOT Class 1.3G explosives, from June 30 through July 6 of each year, provided that the vehicles operated have gross vehicle weight ratings (GVWR) of less than 10,001 pounds and are operated within 300 miles of the sites of origin. The FHWA requests public comment on whether, if granted, the proposed grant of waiver authority would be contrary to the public interest or diminish the safe operation of commercial motor vehicles.

**DATES:** Comments must be received on or before June 9, 1995.

**ADDRESSES:** All signed, written comments should refer to the docket number that appears at the top of this document and should be submitted to the Federal Highway Administration, Room 4232, Office of Chief Counsel, HCC–10, 400 Seventh Street SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Commenters who want to be notified that the FHWA received their comments should include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Redmond, Office of Motor Carrier Standards, (202) 366–4001, or Mr. Raymond W. Cuprill, Office of the Chief Counsel, HCC–20, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

The Commercial Driver's License (CDL) regulations, issued pursuant to the Commercial Motor Vehicle Safety Act of 1986 (Title XII, Pub. L. 99–570, 100 Stat. 3207, 3207–170) (49 U.S.C. 31502), are found at 49 CFR Part 383 (1994). Section 383.23 of the regulations sets forth the general rule that no person shall operate a commercial motor vehicle (CMV) unless such person: (1) Has taken and passed a knowledge test and, if applicable, a driving test, which meets Federal standards, and (2) possesses a CDL, which is evidence of having passed the required tests. These Federal standards ensure that drivers of a CMV: (1) Have a single driver's license and a single driving record, (2) are tested for the knowledge and skills needed to drive a vehicle representative of the vehicle that they will be licensed to drive, and (3) are disqualified from driving a CMV when convicted of certain criminal or traffic violations. Drivers operating commercial motor vehicles that haul hazardous materials are also required to take and pass specialized tests for specific endorsements to their licenses.

The term ''commercial motor vehicle'' is defined to include, a motor vehicle:

(1) With a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a GVWR of more than 10,000 pounds; or

(2) With a GVWR of 26,001 or more pounds; or

(3) Designed to transport 16 or more passengers, including the driver; or

(4) Used in the transportation of quantities of hazardous materials which require the vehicle to be placarded under the Hazardous Materials Transportation Regulations (49 CFR part 172, subpart F). 49 CFR 383.5 (1994).

**CDL Waivers**

Section 12013 of the Commercial Motor Vehicle Safety Act of 1986 (the Act) authorizes the Secretary of Transportation to waive any class of drivers or vehicles from any or all of the provisions of the Act or the implementing regulations if the Secretary determines that the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. The regulatory procedures governing the issuance of waivers are found at 49 CFR 383.7 (1994).

The FHWA has granted a CDL waiver to military personnel operating military vehicles and has authorized the States to waive certain farmers, firefighters and operators of emergency equipment in implementing the CDL regulations. See 53 FR 37313, September 26, 1988. In addition, the agency also authorized the States to waive, at their option, employees of farm-related service industries (custom harvesters, retail outlets and suppliers, agri-chemical businesses, and livestock feeders) from the CDL knowledge and skill testing requirements, and issue these employees restricted CDLs for a seasonal period or periods not to exceed a total of 180 days in any 12-month period, subject to certain conditions. See 57 FR 13650, April 17, 1992.

**Petition**

The American Pyrotechnics Association, a non-profit group representing the pyrotechnics industry, has petitioned the FHWA to reconsider its previous determinations,[1] and grant a CDL waiver to part-time drivers involved in fireworks displays. Petitioner asserts that the requested waiver would only be available to part-time employees who drive small vehicles containing limited quantities of fireworks over short distances within a period of seven days. All permanent fireworks employees have obtained CDLs as part of their job requirements. Moreover, all part-time employees falling within this proposed waiver would be required to complete fireworks-specific training pursuant to 49 CFR 172.700 *et seq.*

Petitioner argues that the waiver is necessary because, since implementation of the CDL rule in 1992, the fireworks industry has faced serious problems in delivering small fireworks displays to customers located in remote areas. In order to respond to thousands of requests by Fourth of July celebrants, such as small townships, the companies must rely on part-time drivers who not only drive to the display sites, but also handle and discharge the fireworks. Most such technicians work full-time at other jobs, but return each year to the fireworks industry because of their interest in fireworks displays and the opportunity to earn extra money. Petitioner claims that these individuals would not go through the trouble and expense of obtaining a CDL, which would require preparation for irrelevant endorsement examinations that cover all hazardous materials, in part because they do not receive sufficient compensation to make the effort worthwhile. Moreover, these are not professional commercial drivers transporting hazardous materials, but persons who derive their livelihood from other professions, typically school teachers, and are involved in the fireworks business for several days every year. Due to the extensive use of such seasonal employees by the fireworks industry to meet the peak demands of the Fourth of July season, Petitioner asserts that the proposed waiver would alleviate the need for those employees to obtain a CDL, while still requiring that they meet extensive Federal safety and local licensing requirements specific to the transport and handling of fireworks.

In addition, the transportation of fireworks for displays in small communities is provided by vehicles, generally having a GVWR of less than 10,001 pounds, for which a CDL would not be required but for the hazardous nature of the cargo. The vehicles are largely pickup trucks and vans for which no special vehicle operation skills are required. Consequently, the Petitioner has narrowed the waiver request to include only the following:

1. Part-time drivers, to be defined as drivers over 21 years of age working no more than seven days per year in the pyrotechnics industry;
2. Drivers must be operating under the appropriate license or approval as a pyrotechnic operator issued by State or local authority having jurisdiction in accordance with State fireworks law;
3. Drivers will operate within a 300 mile radius of the driver's work reporting location;
4. Vehicles must have a GVWR less than 10,001 pounds;
5. Vehicles must be carrying 500 or less pounds of Class 1.3G explosives;
6. Driver must carry documentation certifying that he/she has received fireworks-specific transportation safety training required under 49 CFR Part 172, subpart H; and
7. Driver must carry a certificate indicating that his/her driving record has been investigated by the fireworks company offering the fireworks for transportation, and the driver has not been found guilty of a ''serious traffic violation'' as defined in 49 CFR Part 383 during the preceding 12 months.

Copies of this and previous petitions filed by the American Pyrotechnics Association and other members of the pyrotechnics industry are being included in the docket established by this notice and may be examined by the public.

**Proposed Waiver**

In order to provide relief to the pyrotechnics industry, the FHWA is proposing to authorize limited waivers to be granted by States, at their discretion, from the CDL testing and licensing standards, without jeopardizing Federal funds. These waivers could be granted to certain part-time drivers involved in the transportation of fireworks to pyrotechnic display sites, and would relieve those drivers from the requirement to obtain a hazardous materials endorsement and consequently from any requirement to obtain a CDL.

The proposed waiver authority would be subject to the following conditions:

(1) Drivers covered—Applicants must be 21 years of age and hold a valid operator's license, and drive solely on a part-time basis for the pyrotechnics industry. The term ''part-time driver'' as used herein, refers to drivers working for the pyrotechnics industry for no more than 7 consecutive days per year (June 30 through July 6) and involved in the transportation of fireworks to be used in pyrotechnics displays. Applicants must also hold a State or local permit or license issued by State or local authority having jurisdiction in accordance with State fireworks law and must carry documentation certifying that he/she has received fireworks-specific transportation safety training pursuant to 49 CFR 172.700 *et seq.* The State or local permit or license and the certificate of training will substitute for an otherwise required CDL during the period of the waiver, in order to allow State enforcement of the CDL requirements.

(2) Duration—Waivers from the CDL requirements would only be valid for the period from June 30 through July 6.

(3) Materials—Waivers would authorize the transportation of only 500 or less pounds of fireworks classified as DOT Class 1.3G explosives.

[1] The FHWA had denied a petition for a CDL waiver filed by the American Pyrotechnics Association. *In the Matter of American Pyrotechnics Association,* Petition No. 91–03, May 3, 1991. See also, Administrator Larson's letter dated July 5, 1991, denying the American Pyrotechnics Association's request for reconsideration.

(4) Vehicles—Waivers would be limited to the operation of Group C vehicles, as defined in 49 CFR 383.91, provided that the vehicle operated has a GVWR of less than 10,001 pounds.

(5) Area—Waivers would be granted to operate the vehicles described above within a 300-mile radius from the driver's work reporting location. Neighboring States may recognize such waivers provided the driver and the vehicle are operating within the 300-mile radius.

(6) Convictions—Waivers would only be granted to drivers who have not been convicted of a ''serious traffic violation'' as defined in 49 CFR 383.5, in any type of motor vehicle during the preceding 12 month period.

The Petitioner claims that the conditions and restrictions imposed on the grant of waiver authority will ensure that the safe operation of CMVs is not diminished. Drivers participating in the waiver program would be part-time non-professional drivers, operating vehicles that would not be considered CMVs except for the nature of the cargo. These drivers would be required to have a good driving record and would be licensed, knowledgeable and trained in the handling of the hazardous materials to be carried. It also appears that the waiver restrictions related to driver documentation, duration, and area of operation (mileage) will ensure that implementation, regulation and enforcement of the waivers' requirements by the States is not unduly burdensome. Moreover, the final decision on whether to implement a waiver program will rest with the States.

## Request for Public Comment

The FHWA is requesting specific views, information, and data that it should consider when determining whether or not the proposed waiver would be contrary to the public interest or would diminish the safe operation of CMVs. Commenters are strongly encouraged to provide any additional facts or views pertaining to the proposed waiver.

(Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 31502; 49 U.S.C. 31136; 49 CFR 1.48; 49 CFR 383.7; 23 U.S.C. 315)

Issued on: May 4, 1995.

**Rodney E. Slater,**

*Federal Highway Administrator.*

[FR Doc. 95–11469 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 673

**[Docket No. 950428123-5123-01; I.D. 042595A]**

**RIN 0648–AIOO**

## Scallop Fishery off Alaska; Closure of Federal Waters to Protect Scallop Stocks

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

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

**SUMMARY:** NMFS proposes regulations to implement a Fishery Management Plan for the Scallop Fishery Off Alaska (FMP). The FMP would specify the long-term optimum yield (OY) for the scallop fishery in Federal waters off Alaska as a numerical range of 0–1.1 million lbs (0–499 metric tons (mt)) of shucked scallop meats. The only management measure authorized under the FMP would be an interim closure of Federal waters off Alaska to fishing for scallops. The closure of Federal waters would remain effective for up to 1 year and is necessary to prevent overfishing of scallop stocks during the period of time an alternative FMP is prepared that would allow the controlled harvest of scallops in Federal waters. This action is intended to promote the objective of preventing overfishing of the scallop resource that could otherwise result from unregulated fishing for scallops in Federal waters.

**DATES:** Comments must be received by June 19, 1995.

**ADDRESSES:** Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the proposed FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the FMP may be obtained from the same address.

**FOR FURTHER INFORMATION CONTACT:** Susan Salveson, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

## Background

The scallop resource off Alaska has been commercially exploited for almost 30 years. Weathervane scallop stocks off Alaska were first commercially explored by a few vessels in 1967. The fishery grew rapidly over the next 2 years with about 19 vessels harvesting almost 2 million lbs (907 mt) of shucked meat. Since then vessel participation and harvests have fluctuated greatly, but have remained below the peak participation and harvests experienced in the late 1960's. Between 1969 and 1991, about 40 percent of the annual scallop harvests came from waters of the State of Alaska (State). Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. In 1994, only 14 percent of the 1.2 million lbs (544 mt) landed were harvested in State waters, with the remainder harvested in Federal waters off Alaska.

The State has managed the scallop fishery in State and Federal waters, consistent with section 306(a)(3) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act), which indicates that a state may regulate any fishing vessel outside state waters, if the vessel is registered under the laws of that state. The North Pacific Fishery Management Council (Council) had until recently concluded that the scallop management program implemented by the State provided sufficient conservation and management of the Alaska scallop resource and did not need to be duplicated by direct Federal regulation. Therefore, no Federal regulations were implemented to govern the scallop fishery in Federal waters.

The Council currently is considering options for an FMP for the scallop fishery off Alaska that would authorize a moratorium on vessel entry into the fishery. A vessel moratorium cannot be implemented under Alaska State regulations given existing State statutes. At its April, 1994, meeting, the Council requested NMFS initiate rulemaking to implement an FMP for the scallop fishery off Alaska that would establish a vessel moratorium and defer most other routine management measures to the State. The Council was informed that section 306(a)(3) of the Magnuson Act prohibits a state from regulating a fishing vessel in Federal waters, unless the vessel is registered under the laws of that state. As a result, routine management measures deferred to the State under the Council's proposed FMP could not be applied in Federal waters to vessels not registered with the State. The Council recognized the potential problem of unregistered vessels fishing in Federal waters, but noted that all vessels fishing for scallops in Federal waters were registered under the laws of the State. Therefore, the Council recommended that NMFS proceed with

implementing the Council's proposed FMP, given that all vessels used to fish for scallops off Alaska had been registered with the State and that no information was available to indicate that vessels would not continue to register with the State.

During the period of time that NMFS was developing regulations to implement the Council's proposed FMP, the State informed NMFS that a fishing vessel was fishing for scallops in Federal waters of the Prince William Sound management area closed by the State, and that the vessel was not registered under the laws of the State. As a result, the vessel operator was not subject to State regulations governing the scallop fishery, including requirements to carry an observer at all times to monitor scallop catch and crab bycatch. The State could not stop this uncontrolled fishing activity because the vessel was not registered with the State and was, therefore, operating outside the State's regulatory authority.

On February 17, 1995, the Council held a teleconference to address concerns about uncontrolled fishing for scallops in Federal waters by one or more vessels fishing beyond the reach of State regulations and requested that NMFS implement an emergency rule to close Federal waters to fishing for scallops to prevent overfishing of the scallop stocks. Subsequent to the Council's recommendation, the U.S. Coast Guard boarded an unregistered vessel fishing for scallops and was informed that 54,000 lbs (24.5 mt) of shucked scallop meat was on board. This amount exceeded the State's guideline harvest level for the Prince William Sound area (50,000 lbs (22.7 mt)) by over 100 percent. NMFS issued an emergency interim rule to close Federal waters off Alaska to fishing for scallops on February 23, 1995 (60 FR 11054, March 1, 1995), to respond to concerns that continued uncontrolled harvest of scallops in Federal waters would result in localized overfishing of the scallop resource.

Based on recent events in the scallop fishery that warranted the emergency interim rule, the Council's proposed FMP no longer is an appropriate option for the management of the scallop fishery in Federal waters. Recent participation in the scallop fishery by at least one unregistered vessel, contemplation by other vessel owners of fishing in Federal waters outside State regulations governing the scallop fishery, and the likelihood that uncontrolled fishing for scallops could occur anywhere off Alaska by the highly mobile scallop processor fleet now requires that Federal regulations be implemented to control scallop fishing activity by vessels that do not register with the State.

At its April 1995 meeting, the Council adopted for submission to NMFS an alternative FMP for the Scallop Fishery off Alaska with the intent that this FMP could be reviewed and implemented before the anticipated 90-day extension of the emergency interim rule expires on August 28, 1995. The FMP would authorize an interim closure of Federal waters to fishing for scallops that would continue until the earlier of 1 year or the issuance of a superseding management regime. The intent of the FMP is to prevent an unregulated and uncontrolled fishery for scallops in Federal waters that could result in overfishing of scallop stocks during the period of time an amendment to the FMP is prepared to authorize fishing for scallops under a Federal management regime. The Council has pursued this approach because it has determined that the suite of alternative management measures necessary to support a controlled fishery for scallops in Federal waters could not be prepared, reviewed, and implemented before the emergency rule expires. Instead, the FMP was prepared to protect the long-term productivity of scallops stocks off Alaska necessary to support the future harvest of OY on a continuing basis without the ''boom and bust'' syndrome that has occurred historically in many other scallop fisheries.

A historical description of the scallop fishery off Alaska, as well as harvest amounts and the number of vessels annually participating in the fishery, is presented in the FMP (see **ADDRESSES**). The following discussion presents a summary of the FMP and the management measure proposed to meet its objective, as well as preliminary determinations about the consistency of the FMP with the seven national standards for fishery conservation and management set forth in section 301(a) of the Magnuson Act.

## Management Area and Fishery

The management area covered under the FMP includes all Federal waters of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands area (BSAI). The GOA is defined as the exclusive economic zone (EEZ) of the North Pacific Ocean, exclusive of the Bering Sea, between the eastern Aleutian Islands at 170° W. long. and Dixon Entrance at 132°40′ W. long. The BSAI is defined as the EEZ south of the Bering Strait to the Alaska Peninsula and Aleutian Islands and extending south of the Aleutian Islands west of 170° W. long.

All commercial fisheries for Alaska scallops take place in relatively shallow waters (less than 200 meters (109 fathoms)) of the Continental Shelf. Areas fished during the 1994 scallop fishery included beds in the Bering Sea, off the Alaska Peninsula, in Shelikof Strait, on the east side of Kodiak Island, and along the GOA coast from Yakutat to Kayak Island.

In both the GOA and BSAI, scallops are part of a diverse benthic community. Besides scallops, several other species of invertebrates are commercially harvested off Alaska, including clams, crabs, octopus, squid, and shrimp. In addition to these fisheries, large fisheries for groundfish also exist using pot, longline, jig, and trawl gear.

The weathervane scallop (*Patinopecten caurinus*) is the primary commercial scallop species harvested off Alaska and is distributed from Point Reyes, California, to the Pribilof Islands, Alaska. Although the weathervane scallop has been the principal commercial species, several other species of scallop found in Federal waters off Alaska have commercial potential. These scallops, thought to be closely related to the Icelandic scallops (*Chlamys islandica*) of the North Atlantic, grow to smaller sizes than weathervanes, and thus have not been extensively exploited in Alaska. *Chlamys behringiana* inhabit the Chukchi Sea to the Western Bering Sea. *Chlamys albida* are distributed from the Bering Sea and Aleutian Islands to the Japan Sea. Pink scallops, *Chlamys rubida*, range from California to the Pribilof Islands. Spiny scallops, *Chlamys hastata*, are found in coastal regions from California to the Gulf of Alaska. Rock scallops, *Crassadoma gigantea*, range from Mexico to Unalaska Island. The abundance of this species is not known, and a commercial fishery has never been developed.

## Scallop Biology and Resource Management

A description of the general life cycle of weathervane scallops is presented in the FMP and the EA prepared for the FMP. Scallops spawn in May to July, depending on location. Larvae are pelagic and drift for about 1 month until metamorphosis to the juvenile stage. The ''post-larvae'' settle and attach to a hard surface on the bottom with strings called ''byssal threads.'' Young juveniles may remain attached, or they may become mobile by use of a ''foot,'' or they may swim. Within a few months the shell develops pigmentation, and juveniles then resemble the adult in appearance.

Weathervane scallops mature by age 3 at about 7.6 cm (3 inches) in shell height, and virtually all scallops are mature by age 4. Weathervane scallops are long-lived and may reach an age of 28 years or more. The natural mortality rate (M) is thought to be low, although estimates vary. Based on a 28-year maximum life span, M is estimated to be 0.16.

The stock structure of weathervane scallops has not been studied. Contrary to traditional assumptions about benthic invertebrates generally being ''open'' populations that are well-connected through the dispersion of pelagic larvae by ocean currents, recent evidence suggests that the scallop resource may consist of multiple, discrete, self-sustaining populations that should be viewed as separate stock units for management purposes. Additional study will be required to explore this concept relative to the scallop resources off Alaska.

Only limited information on biological productivity is available for weathervane scallops; such information is important to provide for the conservation of stocks and a sustainable yield in the fishery. Much of this information was collected during the early years of the fishery; the only assessment survey since 1972 was conducted in 1984 in lower Cook Inlet. In addition to a lack of good abundance estimates, no routine biological or fishery sampling programs have been conducted on weathervane scallops. Data collected by a new observer program, instituted by the State in July, 1993, may provide better abundance information. The distribution of scallops in Alaskan waters is rather well-known, but insufficient information on abundance, exploitation rates, recruitment, and other key population dynamics parameters hampers fishery management based on population dynamics.

## State Management of the Scallop Fishery

The Alaska Department of Fish and Game (ADF&G) initiated development of a management plan for the scallop fishery in response to overfishing concerns resulting from recent changes in the weathervane scallop fishery off Alaska. Weathervane scallops possess biological traits (e.g., longevity, low natural mortality rate, and variable recruitment) that render them vulnerable to overfishing. Record landings occurred in the late 1960's (about 1.8 million lb (816 mt) shucked scallop meat), followed by a significant decline in catch through the 1970's and 1980's when landed catch ranged between 0.2 and 0.9 million lbs (91–408 mt). The ADF&G believes this decline is due, in part, to reduced abundance of scallop stocks. Landings since 1989 have increased to near record levels. During this period, the number of vessels fishing for scallops has not increased (about 10–15 vessels annually), although an increase in fishing power is evidenced by a substantial increase in average vessel length (from 84 ft (25.6 m) registered length in 1981 to 110 ft (33.5 m) in 1991), a predominance of full-time scallop vessels, and an increased number of deliveries. Until 1993, the State did not have a data collection program, although some indication exists that overfishing, or at least localized depletion, may have occurred. Data voluntarily submitted by participants in the scallop fishery during the early 1990's showed that an increase in meat counts per pound has occurred, indicating that smaller scallops now account for a greater proportion of the harvest. These data also suggest that catch per unit of effort in traditional fishing grounds has decreased.

Limited age data suggest that the scallop stock historically exploited off west Kodiak Island experienced an age-structure shift from predominately age 7 and older scallops in the late 1960's to an age structure dominated by scallops less than age 6 during the early 1970's. This shift indicated that harvest amounts had exceeded sustainable levels. Changes in fleet distribution from historical fishing grounds primarily in State waters to previously unfished grounds in Federal waters compounded management concerns.

In response to these concerns, the ADF&G implemented a management plan for the scallop fishery in 1993–94, which established a total of nine fishery registration areas corresponding to the Southeastern, Yakutat, Prince William Sound, Cook Inlet, Kodiak, Alaska Peninsula, Dutch Harbor, Adak, and Bering Sea portions of the State. To prevent overfishing and maintain reproductive potential of scallop stocks, ADF&G established a guideline harvest range (GHR) for each of the traditional weathervane scallop fishing areas. In the absence of biomass estimates needed to implement an exploitation rate harvest strategy, the upper limit of the GHR is specified as the long-term productivity (catch) from each of the traditional harvest areas.

If a GHR for a registration area is not specified, ADF&G would authorize fishing for weathervane or other scallop species under special use permits that generally include location and duration of harvests, gear limitations and other harvest procedures, periodic reporting or logbook requirements, requirements for onboard observers, and scallop catch or crab bycatch limits.

The ADF&G also has implemented king and Tanner crab bycatch limits to constrain the mortality of Tanner crab and king crab incidentally taken by scallop dredge gear. Generally, crab limits are set at 1 percent of total crab population for those management areas where crab stocks are healthy enough to support a commercial fishery. In areas closed to commercial fishing for crab, the crab bycatch limits for the scallop fishery are set at 0.5 percent of the total crab population.

Specified waters are closed to fishing for scallops to prevent scallop dredging in biologically critical habitat areas, such as locations of high bycatch of crab or nursery areas for young fish and shellfish. State regulations also require each vessel to carry an observer at all times to provide timely data for monitoring scallop catches relative to GHRs and for monitoring crab bycatch. Observers also collect scientific data on scallop catch rates, size distribution, and age composition. This information is required by ADF&G for potential adjustment of GHRs based on changes in stock status and productivity.

Last, ADF&G regulations establish gear specifications to minimize the catch of undersized scallops and efficiency controls to reduce the economic feasibility of harvesting scallops much smaller than sizes associated with OY. Current efficiency controls include a ban on automatic shucking machines and a crew limit of 12 persons.

## Management Objective of the FMP

The objective of the FMP is to prevent localized overfishing of scallop stocks and protect the long-term productivity of the resource to allow for the achievement of OY on a continuing basis. This objective is based on the premise that uncontrolled fishing for scallops in Federal waters could result in irreversible damage to the resource's ability to recover in a reasonable period of time. Fishing on a stock at a level that severely compromises that stock's future productivity is counter to the goals of the Magnuson Act and seriously jeopardizes the opportunity to harvest OY on a continuing basis under a future management regime that would authorize a regulated fishery for scallops in Federal waters. Conservative management of the scallop resource is warranted given (1) unprecedented scallop fishing operations in Federal waters outside State jurisdiction and not

subject to State regulation, (2) the harvesting and processing capacity of the scallop fleet, which, if allowed to fish unregulated in Federal waters, could exceed State harvest guidelines by several orders of magnitude, (3) inadequate data on stock status and biology, and (4) the vulnerability of the scallop resource to localized depletion.

**Optimum Yield (OY)**

Under the Magnuson Act guidelines for FMPs (50 CFR part 602), the most important limitation on the specification of OY is that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing. The determination of OY requires a specification of maximum sustainable yield (MSY). However, biomass estimates for scallops are lacking, and the continuing exploratory nature of this fishery into new areas makes numerical estimation of MSY for weathervane and other scallop species not possible at this time. NMFS recognizes that cases exist where the specification of MSY may either be impossible or irrelevant. This may be due to lack of assessment data, or because biological resiliency or high fecundity of some stocks or other fishery characteristic may allow OY to become a descriptive statement only, making a numerical calculation of MSY unnecessary. Nonetheless, the OY still should be based on the best scientific information available (50 CFR 602.10(f)(4)(v)).

Instead of specifying OY as a fishing rate or constant catch level, the long-term OY specification for the scallop resource in Federal waters off Alaska (all species) is specified as a numerical range. In the absence of biomass estimates needed to implement an exploitation rate harvest strategy, the OY is specified as the long-term productivity. The OY range proposed is 0 to 1,100,000 lb (0–499 mt) of shucked scallop meats, and is derived from historical catches harvested from Federal waters. The low end of the range is the lowest catch on record (zero pounds in 1978). The high end of the OY approximates the highest catch taken from Federal waters since the ''fishing up'' period (1,087,450 lb (493.3 mt) in 1993). During the period of time Federal waters are closed to fishing for scallops under the FMP, OY would be equal to zero for the same reasons that support the closure (see ''Management measures,'' below).

**Overfishing Level**

Overfishing is a level of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis. The definition of overfishing for a stock or stock complex may be expressed in terms of maximum level of fishing mortality or other measurable standard designed to ensure the maintenance of the stock's productive capacity. Overfishing must be defined in a way to enable the Council and NMFS to monitor and evaluate the condition of the stock or stock complex relative to the definition. Overfishing definitions must be based on the best scientific information available and reflect appropriate consideration of risk. Risk assessments should take into account uncertainties in estimating harvest levels, stock conditions, or the effects of environmental factors.

The lack of biological information on Alaska scallops inhibits the numerical specification of overfishing. Although it is difficult to define precisely the level at which fishing jeopardizes recovery of a stock, indicators of existing or impending overfishing are available that should be heeded. For the reasons discussed above that led to the current ADF&G scallop management program, harvest levels of scallops off Alaska in the 1980's and early 1990's may not be sustainable. This concern, as well as other uncertainties about the scallop biomass and stock dynamics, must be taken into account in developing an overfishing definition. Although overfishing could be defined as a fishing mortality rate for weathervane scallops based on existing life history data, the lack of stock assessment information (surveys, population age, or size structure) limits the use of an overfishing rate at this time. As in the case of other stocks where very little biological information is available, overfishing can be defined as landings that exceed OY. As data collected from the fisheries and/or assessment surveys of the scallop resource are analyzed, overfishing for scallops may be defined on a fishing mortality rate basis. Until better information becomes available, overfishing is defined as landings that exceed OY.

**Management Measures**

To control fishing effort and avoid overfishing of scallop stocks, the only management measure authorized under the proposed FMP would be an interim closure of Federal waters off Alaska to fishing for scallops. Such a closure would protect the scallop resource from unregulated fishing and localized overfishing while more long-term measures are prepared that are expected to allow for controlled harvesting of scallops in Federal waters. An interim closure of Federal waters is a necessary and appropriate interim measure for the protection and promotion of the long-term health of the scallop resource. Such action is expected to promote the stability of the scallop fishery under an anticipated future FMP or FMP amendment authorizing fishing for scallops in Federal waters. An interim closure of Federal waters to prevent an unregulated fishery also would mitigate any potentially adverse impact crab bycatch in the scallop fishery may have on either crab stocks or their habitat off Alaska.

Given that NMFS intends the interim closure to be superseded by a long-term FMP or FMP amendment, the closure would be effective until either (1) a date 1 year from the date the regulations implementing the FMP become effective, or (2) the measures in this FMP are superseded by a future FMP or FMP amendment that contains management measures to allow the controlled harvest of scallops in Federal waters without overfishing.

**Data Collection and Assessment**

NMFS and other management agencies should initiate efforts to identify and gather the data needed to improve understanding of the dynamics of the scallop resource and the effect of exploitation on the capacity of scallop stocks to produce MSY on a continuing basis. The type of information that should be pursued, in coordination with the State, includes: (1) Stock abundance and size/age structure; (2) scallop biology, life history, and stock production parameters; (3) analyses of population thresholds and recruitment overfishing; (4) estimation of optimum dredge ring size or minimum shell height based on studies of rates of growth and mortality; (5) investigations of exploitation rates and alternative management strategies; (6) genetic stock structure; and (7) new gear designs to reduce bycatch and to minimize adverse effects on bottom habitat. This objective may be attained, in part, with data collected by the Alaska State observer program. However, assessments of the scallop resource off Alaska, as well as the conduct of other scallop research, will be dependent on Federal funding, State of Alaska general fund appropriations, or future amendments to the FMP that would authorize experimental fishing under Federal permit conditions.

**Impacts of the FMP on the Alaska Scallop Fishery**

Closure of the Federal waters to fishing for scallops would cause substantial impact to participants in the Alaska scallop fisheries. Of the 16

vessels making landings of scallops in 1994, 11 vessels landed no other catch, indicating their dependence on this resource. These vessels accounted for 88 percent of the scallops harvested in Federal and State waters during 1994, or approximately 1.1 million lbs (499 mt) of shucked scallop meats. Using the 1994 average exvessel price of $6.00/lb and assuming that 14 percent of the total annual scallop landings would continue to come from State waters, this would equate to an annual foregone revenue of about $ 5.7 million. During 1994, an additional five vessels landed 0.1 million lbs (45 mt) of shucked scallop meats, equating to the potential for another $0.52 million in foregone revenue under the proposed closure. The scallop catch by these five vessels ranged from less than 1 percent to 46 percent of these vessels' total 1994 landed catch of all species, including groundfish and crab. Taken together, a 1-year closure of Federal waters off Alaska could result in a foregone revenue that approaches $6 million. However, this short-term impact is justified by the need to prevent overfishing of the scallop resource and ensure the long-term productivity of the scallop resource necessary to support the harvest of OY on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters.

**Consistency Determinations With the National Standards**

NMFS preliminarily has determined that the proposed FMP is consistent with the seven national standards for fishery conservation and management set forth under section 301(a) of the Magnuson Act. A summary of these determinations follows.

*National standard 1.* The proposed interim closure of Federal waters to fishing for scallops would be a conservation measure to control fishing effort and prevent overfishing of scallop stocks until an alternative management regime may be implemented, which is expected to authorize a regulated fishery in Federal waters. The proposed interim closure would be effective for a 1-year period unless superseded earlier by an alternative management regime. During this interim closure, data should be assessed and collected on which to base a Federal management program for the Alaska scallop fishery. Prevention of overfishing during this interim period would help guarantee achievement of OY from a healthy, productive scallop resource when the fishery is authorized to open under a future management regime. Furthermore, OY would be achieved on a continuing basis, given that weathervane scallops are a long-lived species with a low natural mortality rate, and the resource harvest foregone during the period Federal waters are closed largely would be available to the fishery after a 1-year period. NMFS recognizes that the economic impact on scallop fishermen could be substantial and that the potential foregone revenue to scallop fishermen could approach $6 million if Federal waters remain closed for the entire 1-year period. However, this short-term impact is justified by the need to prevent overfishing of the scallop resource and ensure the long-term productivity of the scallop resource necessary to support the harvest of OY on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters.

*National standard 2.* The proposed FMP is based on the best information available on the status of the scallop resource off Alaska. This information is partially based on inference derived from knowledge of scallop resources elsewhere in the world. Other information is based on fishery data collected under the State scallop management program. Although this information is the best information available currently, NMFS acknowledges that additional data needs to be collected and assessed to improve the management and understanding of the scallop resource and the fishery that depends upon it. The type of information that NMFS intends to pursue, in coordination with the State, is listed above under ''Data Collection and Assessment.''

*National standard 3.* A single OY range is proposed for all scallop species off Alaska, although scientific evidence suggests that the scallop resource may consist of multiple, self-sustaining stocks. At this time, insufficient information exists to determine how many separate scallop stocks exist off Alaska and what their distribution is. NMFS anticipates that the future Federal management regime for the scallop fishery may need to establish separate management districts with separate scallop total allowable catch amounts, and crab bycatch limits, to address the stock distribution of Alaska scallops and the potential impact of the scallop fishery on different crab stocks, and to prevent localized depletion of the scallop resource.

*National standard 4.* Neither the proposed FMP nor its implementing regulations would allocate fishing privileges or discriminate between residents of different states. The proposed interim closure of Federal waters to fishing for scallops would apply to all vessels, regardless of a vessel owner's state of residency.

*National standard 5.* An interim closure of Federal waters to prevent overfishing of the scallop resource is intended to maintain the health and productivity of Alaska scallop stocks while a Federal management regime is developed and implemented to control the long-term harvest of this resource and to reduce the probability of an inefficient ''boom and bust'' fishery. The proposed FMP does not contain a provision for an economic allocation of fishing rights or other limited access program.

*National standard 6.* The proposed FMP would close Federal waters to fishing for scallops as an effective risk-adverse management measure to prevent overfishing of the scallop resource, which could otherwise occur in an unregulated and uncontrolled fishery. The need for conservative management measures is strengthened, given the uncertainty surrounding the current level of understanding of scallop stock dynamics and the effect of fishery exploitation on those dynamics. The closure of Federal waters is a short-term measure that will expire within a 1-year period, affording an opportunity to develop and implement management measures to allow a regulated fishery for scallops in Federal waters.

*National standard 7.* The proposed FMP is necessary to prevent an uncontrolled and unregulated fishery for scallops in Federal waters, which could result in overfishing of scallop stocks. The State has actively managed the scallop fishery in State and Federal waters under section 306(a)(3) of the Magnuson Act. However, the State does not have the jurisdiction to stop uncontrolled fishing for scallops in Federal waters by vessels that are not registered with the State. A Federal FMP is the only means to control an unregulated fishery in Federal waters and must be implemented to protect the scallop resource for the long-term benefit of the resource and the fishery that depends upon it. The costs associated with foregone harvest of scallops in Federal waters during the period of time the closure is effective may be substantial to scallop fishermen. However, NMFS anticipates that the Council will immediately begin to develop an alternative management regime that would allow for a scallop fishery in Federal waters.

**Classification**

Section 304(a) of the Magnuson Act requires NMFS to publish regulations implementing an FMP within 15 days of

receipt of the FMP and regulations from the Council for consideration and review. At this time, NMFS has not determined that the FMP these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. As discussed above under ''Impacts of the FMP on the Alaska Scallop Fishery,'' closure of Federal waters off Alaska to fishing for scallops could result in a significant economic impact to nearly all participants in the Alaskan scallop fishery that could approach $6 million in foregone revenues during the 1-year period the closure is effective. Conversely, the long-term impact of not closing Federal waters to fishing for scallops could be substantially greater, given that overfishing of scallop stocks would result in significantly reduced catch or long-term fishery closures. This short-term impact is justified by the need to prevent overfishing of the scallop resource and ensure the long-term productivity of the scallop resource necessary to support the harvest of OY on a continuing basis under a future management regime that authorizes a regulated fishery in Federal waters. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

## List of Subjects in 50 CFR Part 673

Fisheries.

Dated: May 5, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 673 is proposed to be added as follows:

1. Part 673 is added to Chapter VI of 50 CFR to read as follows:

## PART 673—SCALLOP FISHERY OFF ALASKA

**Sec.**

673.1 Purpose and scope.
673.2 Definitions.
673.3 Prohibitions.

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

### § 673.1 Purpose and Scope.

(a) These regulations implement Federal authority under the Magnuson Act to manage the scallop fishery in the exclusive economic zone off Alaska.

(b) Regulations in this part govern commercial fishing for scallops in the exclusive economic zone off Alaska.

### § 673.2 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR part 620, the terms in 50 CFR part 673 have the following meanings:

*Exclusive Economic Zone (EEZ)* (see § 620.2 of this chapter)

*Scallop(s)* means any species of the family Pectinidae, including, without limitation, weathervane scallops (*Patinopecten caurinus*).

### § 673.3 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to take or retain any scallops in the EEZ seaward of Alaska during the time period that extends through the earlier of [Insert date 1 year after the effective date of this final rule.] or until superseded by other management measures.

[FR Doc. 95–11460 Filed 5–5–95; 2:12 pm]

BILLING CODE 3510–22–F

# Notices

Federal Register
Vol. 60, No. 90
Wednesday, May 10, 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

### Office of the Secretary

**RIN 0503–AA09**

### Notice of Designation of Empowerment Zones and Enterprise Communities

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

**ACTION:** Notice of designation of Empowerment Zones and Enterprise Communities.

**SUMMARY:** On January 18, 1994 USDA published an interim rule that implemented that portion of subchapter C, part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 dealing with the designation of Rural Empowerment Zones and Enterprise Communities. On January 18, 1994 USDA also published a notice inviting applications for designation of Empowerment Zones and Enterprise Communities.

This notice announces the jurisdictions that were designated Rural Empowerment Zones and Enterprise Communities by USDA.

**FOR FURTHER INFORMATION CONTACT:** Dayton Watkins, Acting Administrator, Rural Business and Cooperative Development Service (''RBCDS''), U.S. Department of Agriculture, 14th Street & Independence Avenue, S.W., Rm. 5045 South Agriculture Building, Washington, DC 20250, or telephone (202) 720–6165.

**SUPPLEMENTARY INFORMATION:** On January 18, 1994 USDA published an interim rule that implemented that portion of subchapter C, part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 (''Title XIII'') which addresses the designation of Rural Empowerment Zones and Enterprise Communities (59 FR 2686 (1994)). This interim rule was made final on February 6, 1995 (60 FR 6945 (1995)).

Title XIII also provides for the designation of Urban Empowerment Zones and Enterprise Communities. As noted in the January 18, 1994 interim rule, the rural part of the program is administered by USDA as a Federal-State-local and private-sector partnership. The urban part of the program is administered by the Department of Housing and Urban Development (''HUD''), which also published an interim rule on January 18, 1994 (59 FR 2700 (1994)).

On January 18, 1994 USDA also published a notice inviting applications from States and local governments nominating rural areas for designation as Empowerment Zones and Enterprise Communities (59 FR 2696 (1994)). The January 18, 1994 notice provided for an application deadline of June 30, 1994. On December 21, 1994 President William J. Clinton announced the rural areas that were designated by USDA and the urban areas that were designated by HUD as Empowerment Zones and Enterprise Communities.

Publication in the **Federal Register** of this Notice announcing nominated areas that were designated either as Empowerment Zones or Enterprise Communities (Appendix A), fulfills the requirement, set forth in the January 18, 1994 interim rule (59 FR 2686 (1994)), that designations published.

Dated: April 27, 1995.

**Dan Glickman,**

*Secretary.*

APPENDIX A.—USDA'S RURAL EMPOWERMENT ZONES AND ENTERPRISES COMMUNITIES

| Name | State | Counties |
|---|---|---|
| **Empowerment Zones** | | |
| Kentucky Highlands EZ | KY | Clinton, Jackson, Wayne. |
| Mid-Delta EZ | MS | Bolivar, Sunflower, Leflore, Washington, Humphreys, Holmes. |
| Rio Grande Valley Empowerment Zone | TX | Cameron, Hidalgo, Starr, Willacy. |
| **Enterprise Communities** | | |
| Chambers County EC | AL | Chambers. |
| Greene & Sumter Counties Rural EC | AL | Greene, Sumter. |
| East Central Arkansas EC | AR | Cross, Lee, Monroe, St. Francis. |
| Mississippi County EC | AR | Mississippi. |
| Arizona Border Region EC | AZ | Cochise, Yuma, Santa Cruz. |
| Imperial County EC | CA | Imperial. |
| City of Watsonville/County of Santa Cruz EC | CA | Santa Cruz. |
| Jackson County, Florida EC | FL | Jackson. |
| Crisp/Dooly EC | GA | Crisp, Dooly. |
| Central Savannah River Area EC | GA | Burke, Hancock, Jefferson, McDuffie, Taliaferro, Warren. |
| Northeast Louisiana Delta EC | LA | Madison. |
| Macon Ridge EC | LA | Catahoula, Concordia, Franklin, Morehouse, Tensas. |
| Lake County EC | MI | Lake. |
| City of East Prairie, Mississippi County, MO EC | MO | Mississippi. |
| North Delta Mississippi EC | MS | Panola, Quitman, Tallahatchie. |
| Halifax/Edgecombe/Wilson EC | NC | Halifax, Edgecombe, Wilson. |
| Robeson County EC | NC | Robeson. |

APPENDIX A.—USDA'S RURAL EMPOWERMENT ZONES AND ENTERPRISES COMMUNITIES—Continued

| Name | State | Counties |
|---|---|---|
| La Jicarita EC | NM | Mora, Rio Arriba, Taos. |
| Greater Portsmouth EC | OH | Scioto. |
| Southeast Oklahoma EC | OK | Choctaw, McCurtain. |
| Josephine County EC | OR | Josephine. |
| City of Lock Haven Federal EC | PA | Clinton. |
| Williamsburg-Lake City EC | SC | Williamsburg, Florence. |
| Beadle/Spink/South Dakota EC | SD | Beadle, Spink. |
| Fayette County/Haywood County Enterprise Community | TN | Haywood, Fayette. |
| Scott/McCreary Area Enterprise Community | TN | Scott (TN), McCreary (KY). |
| Accomack-Northampton, Virginia EC | VA | Northampton, Accomack. |
| Lower Yakima County Rural Enterprise Community | WA | Yakima. |
| Central Appalachia EC | WV | Roane, Braxton, Clay, Nicholas, Fayette. |
| McDowell County EC | WV | McDowell. |

[FR Doc. 95–11494 Filed 5–9–95; 8:45 am]

BILLING CODE 3410–07–M

## Forest Service

### Charlie Tyson Project; Idaho Panhandle National Forests, St. Maries Ranger District, Benewah County, Idaho

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** Notice is hereby given that the Forest Service is gathering information to prepare an Environmental Impact Statement (EIS). This EIS is proposing management activities designed to move the Charlie Tyson project area toward its desired future condition, a healthy and diverse ecosystem. Desired future condition goals specific to the project area were developed by an interdisciplinary team for the purpose of maintaining ecosystem productivity and diversity while incorporating human values and needs. The goals for this project area are listed below:

1. The first goal is to provide vegetation patterns and natural variability that include important components within the range of historic levels. Using historic vegetation patterns as a reference point, the project will strive to maintain more mature timber (80+ years old) in larger patches than currently exist in the project area. To maintain historic natural variability for the project area, the project will strive to promote more canopy layers and more species components. This entails perpetuating seral tree species, subalpine fir/spruce, quaking aspen and open ridge tops with large ponderosa pine. This shift toward the historic range of vegetation patterns also entails maintaining riparian area with stable stream channels and fish habitats supporting viable populations of desired fish species; thus the area would be fully supporting beneficial uses.

2. The second goal is to incorporate additional human values and needs by providing commercial wood products, a long range transportation plan where only essential roads for land management exist, a visually attractive landscape, a diverse array of recreational activities and maintaining existing grazing allotments. There are areas with past clearcut harvest units that detract from the visual attractiveness of the landscape; the harsh edges of these clearcuts could be softened by partial cutting. For recreation, emphasis for this area is on dispersed use and trail development; unauthorized trail use will be addressed and three historic Forest Service trails could be added to the trail system.

3. The third goal is to maintain wildlife habitats. Currently, the project area has a lack of quality security for wildlife. Activities proposed will include restricting trail and road access for various kinds of users.

It will take time to implement the desired future condition described above; proposed management activities would entail using techniques to shift the project area toward desired future condition. Management techniques would include prescribed fire, timber harvesting, road building, road use restrictions and closures, wildlife security area(s), watershed/fish habitat improvements and trail development. The Forest Service estimates that this proposed action would include: 415 acres of underburning, 2773 acres of timber harvesting (commercial thinning—1892 acres, group selection—46 acres, irregular shelterwood—381 acres, group shelterwood—403 acres, seedtree—20 acres, clearcutting—31 acres), 10.6 miles of new road construction, 1.7 road miles taken off the road system and a 6200 acre area closure to all motorized vehicles in the Charlie-Preston drainages (providing 5000 acres of wildlife security). The proposed action also entails implementing fish/watershed improvement projects in the East Fork of Charlie, Preston and Brown Creeks and adding three historic Forest Service Trails back on the trail system for maintenance.

**DATES:** Written comments concerning the scope of this analysis must be received within 30 days from the date of this publication in the **Federal Register**.

**ADDRESSES:** Send written comments to District Ranger, St. Maries Ranger District, P.O. Box 407, St. Maries, ID 83861.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and EIS should be directed to Tracy J. Gravelle, St. Maries Ranger District, Phone: 208–245–2531.

**SUPPLEMENTARY INFORMATION:** The Charlie Tyson project area lies within Benewah County, Idaho and encompasses the Charlie Creek drainage. It is located approximately 1 air mile south of Emida, Idaho. The project area contains 18,100 acres of which approximately 14,400 acres are administered by the Forest Service. Management activities would be administered by the St. Maries Ranger District of the Idaho Panhandle National Forests. This EIS will tier to the Forest Plan (September 1987) which provides overall guidance for the Idaho Panhandle National Forests in terms of Goals, Objectives, Standards and Guidelines, and Management Area direction.

Preliminary scoping, including public and other agency participation, was initiated in August 1991 and has recommenced this year. A public meeting for the area was held on September 4, 1991 in St. Maries, Idaho. An additional public open house was held in the town of Emida, Idaho on

January 19, 1994. Two periods of time are identified for the receipt of comments on this analysis. These two public comment periods are: During this scoping process and the period between draft and final environmental impact statements. Comments received within 30 days from the date of this publication (**Federal Register**) will be especially useful in the preparation of the draft EIS.

Several issues have been identified from scoping, field surveys and reconnaissance. The principal issues identified to date are:

1. The vegetation patterns and species composition of the area do not mimic the natural variability noted from data compiled in the early 1900's.
2. There is a lack of quality wildlife security which is perpetuated by existing road management and well established All Terrain Vehicle use in the project area.
3. The forest surrounding the project area is fairly well fragmented.
4. There are areas with past clearcut harvest units that detract from the visual attractiveness of the landscape.
5. There is unauthorized trail building in the area.
6. The old Forest Service Nakarna-Tyson (#338), Eena Creek (#337) and Moolock Creek (#320) trails lie within the project area. These trails are still being used by the public and are in good condition. This is an opportunity to put this trail back on the system.
7. There are some areas needing watershed/fish habitat rehabilitation and this is an opportunity to complete this work. In addition, if management activities were to be implemented, what would be potential impacts on the fish habitat, water quality and stream channel equilibrium.
8. If management activities were to be implemented, what would be the potential impacts on wildlife habitats.
9. How much sustainable timber harvest is available from the project area.
10. The local community has voiced their concern over availability of small timber sales. These sales enable smaller timber operators the opportunity to purchase timber sales.

Development of alternatives is underway. The analysis will consider the No Action alternative in addition to the proposed action (described above) and two alternative actions. The two alternative actions would respond in varying degrees to the purpose and need defined above. These two alternatives are as follows:

1. One alternative would confine proposed timber management activities to areas which can be reached by existing roads, i.e. no new system roads would be necessary. This proposal would include underburning, timber harvesting, a wildlife security area in the Charlie-Preston Creek drainages, watershed/fish improvements and trail development. Potential harvest units for this alternative present many small sale opportunities.
2. One alternative is being proposed for management activities that are limited to certain areas of the project area. This addresses the wildlife security issue for a different part of the project area. This alternative would include underburning, timber harvesting, road construction, potential road obliteration, a wildlife security area in the Eena, Moolock, Brown, Pamas and Short Creek drainages, watershed/fish improvements and trail development. Potential harvest units for this alternative present many small sale opportunities.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 334, 1338 (E.D. Wis. 1980). Reviewers may wish to refer to CEQ regulations 40 CFR 1503.3.

The draft environmental impact statement should be available for public review in May, 1994. The final EIS is scheduled to be completed by September, 1994. The District Ranger, who is the responsible official for this EIS, will make a decision regarding this proposal. This decision and reasons for the decision will be documented in a Record of Decision.

Dated: March 3, 1995.

**Bradley J. Gilbert,**

*District Ranger, St. Maries Ranger District, Idaho Panhandle National Forests.*

The policy of the USDA Forest Service prohibits discrimination on the basis of race, color, national origin, age, religion, sex disability, familial status, or political affiliation. People believing they have been discriminated against in any Forest Service related activity should write to: Chief, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

[FR Doc. 95–11451 Filed 5–9–95; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 17–95]**

### Foreign-Trade Zone 153—City of San Diego, California, Application for Subzone, Calbiochem-Novabiochem Corporation (Life Science Chemicals), San Diego, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of San Diego, California, grantee of FTZ 153, requesting special-purpose subzone status for the life science chemicals processing/distribution facility of Calbiochem-Novabiochem Corporation (CNC) in San Diego, California, within the San Diego 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 26, 1995.

CNC is a wholly-owned subsidiary of Calbiochem-Novabiochem International, Inc. (U.S.), a global manufacturer and distributor of life science fine chemicals used for clinical research and the development of biochemical products. Life science chemicals include human plasma proteins, enzymes, amino acids, detergents, peptides, toxins, antibodies, immunochemicals, resins, inhibitors, buffers, coupling reagents, and chiral synthons.

The CNC facility (2 buildings—a 3rd one planned—totalling 134,000 sq. ft. on 7.8 acres) is located at 10394 Pacific Center Court, San Diego, California. The facility (80 employees) is primarily used to test and repackage life science chemicals for use by academic and government researchers and, industrial and pharmaceutical companies. Some of the products, accounting for about 5 percent of plant shipments, are also involved in blending/processing activity prior to packaging.

The application identifies three types of products that would be initially produced by the blending activity under zone procedures at this time: Chromium tripicolate (duty rate—3.7%), sodium cholate (3.1%), and amino acids (4.2%). The foreign sourced materials involved in their manufacture are picolinic acid

(5.8%), cholic acid (4.0%), and various packaging materials (4.8%–5.3%).

Foreign materials (accounting for about 13–15 percent of material value) that may also be involved in blending/processing activity include buffers, antibodies, detergents, proteins, avidin/biotin, toxins, conjugates, enzymes, enzyme substrates, inhibitors, growth factors, amino acids, reagents for peptide or phosphopeptide synthesis, and peptides. The duty rates on imported materials range from duty-free to 18.6 percent, with most falling between 4 percent and 7 percent. Currently, about 45 percent of merchandise is exported.

Zone procedures would exempt CNC from Customs duty payments on foreign materials that are reexported. The company would be able to choose, in some cases, the finished product duty rates (3.1%–4.2%) rather than the duty rates that would otherwise apply to the foreign materials (duty-free to 18.6%) on the above noted items blended/processed at the facility. The application indicates that zone procedures will improve the plant's international competitiveness and will help increase exports.

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 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 July 10, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 24, 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, Suite 230, 6363 Greenwich Drive, San Diego, CA 92122

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: May 2, 1995.

**John J. Da Ponte, Jr.**

*Executive Secretary.*

[FR Doc. 95–11527 Filed 5–9–95; 8:45 am]

BILLING CODE 3510–DS–P

## International Trade Administration

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity to Request a Review

Not later than May 31, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

| | Period |
|---|---|
| Antidumping Duty Proceedings: | |
| Argentina: Light-Walled Welded Rectangular Carbon Steel Tubing (A–357–802) | 05/01/94–04/30/95 |
| Brazil: Cast-Iron Pipe Fittings (A–351–505) | 05/01/94–04/30/95 |
| Brazil: Certain Iron Construction Castings (A–351–503) | 05/01/94–04/30/95 |
| Brazil: Frozen Concentrated Orange Juice (A–351–605) | 05/01/94–04/30/95 |
| France: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A–427–801) | 05/01/94–04/30/95 |
| Germany: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A–428–801) | 05/01/94–04/30/95 |
| India: Certain Welded Carbon Steel Standard Pipes and Tubes (A–533–502) | 05/01/94–04/30/95 |
| Italy: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A–475–801) | 05/01/94–04/30/95 |
| Japan: Ball Bearings, Cylindrical Roller Bearings, Spherical Plain Bearings, and Parts Thereof (A–588–804) | 05/01/94–04/30/95 |
| Japan: Impression Fabric (A–588–066) | 05/01/94–04/30/95 |
| Japan: Gray Portland Cement and Clinker (A–588–815) | 05/01/94–04/30/95 |
| Korea: DRAMS of One Megabit and Above (A–580–812) | 05/01/94–04/30/95 |
| Korea: Malleable Cast Iron Pipe Fittings, Other Than Grooved (A–580–507) | 05/01/94–04/30/95 |
| Romania: Ball Bearings and Parts Thereof (A–485–801) | 05/01/94–04/30/95 |
| Singapore: Ball Bearings and Parts Thereof (A–559–801) | 05/01/94–04/30/95 |
| Sweden: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A–401–801) | 05/01/94–04/30/95 |
| Taiwan: Certain Circular Welded Carbon Steel Pipes and Tubes (A–583–507) | 05/01/94–04/30/95 |
| Taiwan: Malleable Cast-Iron Pipe Fittings, Other Than Grooved (A–583–507) | 05/01/94–04/30/95 |
| Thailand: Ball Bearings and Parts Thereof (A–549–801) | 05/01/94–04/30/95 |
| The People's Republic of China: Certain Iron Construction Castings (A–570–502) | 05/01/94–04/30/95 |
| United Kingdom: Ball Bearings, Cylindrical Roller Bearings, and Parts Thereof (A–412–801) | 05/01/94–04/30/95 |
| Turkey: Welded Carbon steel Standard Pipe and Tube Products (A–489–501) | 05/01/94–04/30/95 |
| Countervailing Duty Proceedings: | |
| Brazil: Certain Heavy Iron Construction Castings (C–351–504) | 01/01/94–12/31/94 |
| Mexico: Ceramic Tile (C–201–003) | 01/01/94–12/31/94 |
| Singapore: Ball Bearings and Parts Thereof (C–559–802) | 01/01/94–12/31/94 |
| Singapore: Cylindrical Roller Bearings and Parts Thereof (C–559–802) | 01/01/94–12/31/94 |
| Singapore: Needle Roller Bearings and Parts Thereof (C–559–802) | 01/01/94–12/31/94 |
| Singapore: Spherical Plane Bearings and Parts Thereof (C–559–802) | 01/01/94–12/31/94 |
| Singapore: Spherical Roller Bearings and Parts Thereof (C–559–802) | 01/01/94–12/31/94 |

| | Period |
|---|---|
| Sweden: Viscose Rayon Staple Fiber (C–401–056) | 01/01/94–12/31/94 |
| Thailand: Ball Bearings and Parts Thereof (C–549–802) | 01/01/94–12/31/94 |
| Venezuela: Ferrosilicon (C–307–808) | 01/01/94–12/31/94 |

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–009, U.S. Department of Commerce, Washington, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Antidumping (Countervailing) Duty Administrative Review,'' for requests received by May 31, 1995. If the Department does not receive, by May 31, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: May 3, 1995.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 95–11531 Filed 5–9–95; 8:45 am]

BILLING CODE 3510–DS–M

---

**[A–588–815]**

## Gray Portland Cement and Clinker From Japan; Court of International Trade Decision and Suspension of Liquidation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On March 28, 1995, in the case of *Nihon Cement Co., Ltd. et al.* v. *United States,* Slip Op. 95–53 (*Nihon*), the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department) redetermination on remand of the original investigation of the antidumping duty order on gray portland cement and clinker from Japan (56 FR 21658, May 10, 1991).

**EFFECTIVE DATE:** May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michelle Frederick or John Brinkmann, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 482–0186 or 482–5288, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 10, 1991, the Department published in the **Federal Register** the Antidumping Duty Order and Amendment to Final Determination of Gray Portland Cement and Clinker from Japan. In that order, the Department set forth its finding of weighted-average margins for two companies during the period of investigation (December 1, 1989 through May 31, 1990), and announced its intent to instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries.

Subsequent to this determination, the two companies which were the subject of the investigation filed lawsuits with the CIT challenging the determination. Thereafter the CIT issued an order and Opinion dated May 25, 1993, in *Nihon Cement Co., et. al.* v. *United States,* Court No. 91–06–00425, Slip Op. 93–80 (May 25, 1993) remanding the Department's final determination so that the Department could: (1) Recalculate the United States price for Onoda Cement Co.'s (Onoda) sales through Lone Star Northwest's Oregon division; (2) articulate its underlying reasoning regarding every element of 19 U.S.C. section 1677(16)(B) (1988) in its product comparison analysis; (3) recalculate the dumping margin assigned to Nihon Cement Co., Ltd. (Nihon) without collapsing Nihon and the related entities Myojo Cement Co., Ltd. and Daiichi Cement Co., Ltd; and (4) conduct a substantive investigation of the service stations used by Onoda in its home market distribution system.

On September 10, 1993, the Department submitted its Final Remand Results to the CIT. The defendant-intervenor (the petitioner) subsequently filed a motion requesting reconsideration of the court's order of remand in light of the decision in *The Ad Hoc Committee of AX–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* 13 F.3d 398 (Fed. Cir. 1994) (*Ad Hoc Committee*). In that decision, the Ad Hoc Committee court held that the Department had no inherent, ''gap filling'' authority to adjust for home market pre-sale movement expenses. Thus, the CIT remanded the Department's adjustment for home market pre-sale movement expenses for both Nihon and Onoda. In performing the instant remands, however, the CIT agreed with the Department that the authority exists to make such an adjustment to foreign market value (FMV) under the circumstance-of-sale provision of the Department's regulations (19 C.F.R. 353.56). Under this regulation, the Department will make the adjustment to FMV only if the expenses are determined to be directly related to the sales under investigation. To determine whether pre-sale movement expenses are direct, the Department examines the respondent's pre-sale warehousing expenses because the pre-sale movement charges incurred in positioning the merchandise at the warehouse are considered, for analytical purposes, to be ''inextricably linked'' to pre-sale warehousing expenses.

The Department's remand determination to deduct these home market pre-sale movement expenses

from FMV with respect to Nihon was affirmed because, consistent with 19 C.F.R. 353.56, these expenses were demonstrated to be direct expenses. Similarly, the Department's remand determination not to deduct the expenses from FMV associated with Onoda purchase price transactions was affirmed because these expenses were indirect expenses. With respect to Onoda's exporter's sales price comparisons, the court affirmed the Department's decision not to deduct these from FMV, but to include them in the pool of home market indirect expenses to offset indirect expenses in the U.S. market.

By order dated May 18, 1994, the CIT vacated and dismissed the May 25, 1993, remand with regard to the following issues: (1) The recalculation of United States Price for Onoda's sales through Lone Star Northwest's Oregon division; (2) the articulation of the Department's underlying reasoning regarding every element of 19 U.S.C. 1677(16)(B) (1988) in its product comparison analysis; and (3) the conducting of a substantive investigation of the service stations used by Onoda in its home market distribution system.

On July 5, 1994, the Department submitted its Final Results of Redetermination Pursuant To Court Remand for Nihon. On September 8, 1994, the Department submitted its Final Results of Redetermination Pursuant to Court Remand with regard to Onoda and the ''All Others'' rate. The parties subsequently filed comments upon the results of the Department's remand determinations. The Department responded to the parties' comments on January 6, 1995, requesting that the CIT again remand this action in order to provide the Department an opportunity to reexamine the calculation of Nihon's margin by taking into account the October 3, 1990, Supplemental Response submitted by Nihon during the original investigation. By order dated January 19, 1995, the CIT sustained the Department's remand determination with respect to the calculation of Onoda's margin, and ordered this action remanded to the Department for reconsideration of its calculation of Nihon's margin. The Department submitted its Final Results of Redetermination Pursuant To Court Remand on February 16, 1995, that determined a recalculated weighted-average antidumping duty rate of 69.89 percent for Nihon, and 70.23 percent for ''All Others.'' Pursuant to the September 8, 1994, Final Results of Redetermination Pursuant to Court Remand, the revised weighted-average antidumping rate for Onoda is 70.52 percent. The CIT, in Nihon, affirmed all redeterminations and dismissed this action on March 28, 1995.

### Suspension of Liquidation

In its decision in *Timken Co.* v. *United States*, Court No. 89–1489 (January 4, 1990) (*Timken*), the Federal Circuit held that the Department must publish a notice of a decision of the CIT or the Federal Circuit which is not ''in harmony'' with the Department's determination. Publication of this notice fulfills this obligation. The Federal Circuit also held that in such a case, the Department must suspend liquidation until there is a ''conclusive'' decision in the action. The option of appealing this decision is being weighed, and a ''conclusive'' decision can not be reached until the opportunity to appeal expires, or any appeal is decided by the Federal Circuit. Therefore, the Department will continue to suspend liquidation pending the expiration of the period to appeal or pending a final decision of the Federal Circuit if *Nihon* is appealed.

Date: May 4, 1995.

**Paul L. Joffe,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 95–11529 Filed 5–9–95; 8:45 am]

BILLING CODE 3510–DS–P

---

**[C–412–811]**

## Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Countervailing Duty Administrative Review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. We have preliminarily determined the net subsidy to be 20.33 percent *ad valorem* for Allied Steel and Wire Limited (ASW Limited) and 7.03 percent *ad valorem* for all other companies for the period September 17, 1992 through December 31, 1992. We have preliminarily determined the net subsidy to be 20.33 percent *ad valorem* for ASW Limited, 2.68 percent *ad valorem* for United Engineering Steels (UES), and 9.76 percent *ad valorem* for all other companies for the periods January 1, 1993 through January 14, 1993, and March 22, 1993 through December 31, 1993. If the final results remain the same as these preliminary results of administrative review, we will instruct U.S. Customs to assess countervailing duties as indicated above.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dana Mermelstein, Melanie Brown or Christopher Cassel, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 22, 1993, the Department published in the **Federal Register** (58 FR 15327) the countervailing duty order on certain hot-rolled lead and bismuth carbon steel products from the United Kingdom. On March 4, 1994, the Department published a notice of ''Opportunity to Request an Administrative Review'' (59 FR 10368) of this countervailing duty order. We received a timely request for review from UES, a respondent company.

We initiated the review, covering the period September 17, 1992 through December 31, 1993, on April 15, 1994 (59 FR 18099). The review covers two manufacturers/exporters of the subject merchandise and fifteen programs.

### Applicable Statute and Regulations

The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, (54 FR 23366; May 31, 1989) (Proposed Regulations), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the Proposed Regulations were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which,

among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. See 60 FR 80; Jan. 3, 1995.

**Scope of the Review**

Imports covered by this review are hot-rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this review are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this review are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this proceeding is dispositive.

**Best Information Available for ASW Limited**

During the investigation, ASW Limited, an exporter of the subject merchandise, withdrew from participation, and consequently received a rate based entirely on best information available (BIA). Section 776(c) of the Act requires the Department to use BIA ''whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation * * *''.

In this review, ASW Limited did not respond to the Department's two requests for information; therefore, we are assigning ASW Limited a rate based on BIA. The rate we are applying is 20.33 percent *ad valorem*. This rate reflects the rate ASW received in the investigation (see Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom (58 FR 6237, 6243; January 27, 1993)) (*Lead Bar*). To this rate we added the rate calculated for UES in this review for the Inner Urban Areas Act program, since this program was not examined by the Department during the investigation.

**Calculation Methodology for Assessment and Cash Deposit Purposes**

For each year, 1992 and 1993, we calculated the net subsidy on a country-wide basis by first calculating the subsidy rate for each company subject to the administrative review. We then weight-averaged the rate received by each company using as the weight the company's share of total UK exports to the United States of subject merchandise. To determine the value of ASW's exports based on BIA (see Best Information Available for ASW Limited, above), we subtracted the value of UES' exports of subject merchandise to the United States from the total value of U.S. imports of subject merchandise as reported in the U.S. IM–146 import statistics.

We then summed the individual companies' weight-averaged rates to determine the subsidy from all programs benefitting UK exports of subject merchandise to the United States. Since the country-wide rate calculated using this methodology was above *de minimis*, as defined by 19 CFR 355.7, for both 1992 and 1993, we proceeded to the next step and examined the net subsidy rate calculated for each company to determine whether individual company rates differed significantly from the weighted-average country-wide rate, pursuant to 19 CFR 355.22(d)(3).

For 1992, we found that ASW Limited had a significantly different net subsidy rate; therefore, this company is treated separately for assessment and cash deposit purposes for the 1992 period. All other companies are assigned the country-wide rate for this period. For 1993, we found that both ASW Limited and UES had significantly different net subsidy rates; therefore these companies are treated separately for assessment and cash deposit purposes for the 1993 period. All other companies are assigned the country-wide rate for this period.

**Analysis of Programs**

**I. Programs Preliminarily Determined to Confer Subsidies**

A. Allocation of Subsidies From BSC to UES

UES is a joint venture company formed in 1986 by British Steel Corporation (BSC) and Guest, Keen & Nettlefolds (GKN). In return for shares in UES, BSC contributed a major portion of its Special Steels Business and GKN contributed its Brymbo Steel Works and its forging business. BSC was wholly owned by the Government of the United Kingdom at the time the joint venture was formed; BSC was privatized in 1988 and now bears the name British Steel plc (BS plc).

In Lead Bar, the Department found that BSC had received a number of subsidies prior to the 1986 sale of its Special Steels Business to UES. Further, the Department determined that the sale did not alter the effect of these previously bestowed subsidies, and thus the portion of BSC's pre-1986 subsidies which was attributable to the Special Steels Business productive unit transferred to UES (see Lead Bar at 6240). However, the Department modified this allocation methodology in the subsequent Remand Determination for Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom which was based on the privatization methodology set out in the General Issues Appendix appended to the Final Countervailing Duty Determination; Certain Steel Products from Austria (58 FR 37217, 37225; July 9, 1993) (Certain Steel). In Certain Steel, the Department stated that it can no longer be assumed that the entire amount of subsidies allocated to a certain productive unit follows it when it is sold; rather, a portion of the sales price of the productive unit represents the repayment of prior subsidies.

To calculate a rate for the subsidies that were allocated from BSC to UES, we first determined the subsidies attributable to BSC's Special Steels Business (each of these subsidies to BSC is described in detail in Sections A(1) through A(4) below). To calculate the subsidies attributable to BSC's Special Steels Business, we divided the asset value of BSC's Special Steels Business by the value of BSC's total assets. We then applied this ratio to the net present value, in the year of the spin-off, of the future benefit streams from all of BSC's prior subsidies. The future benefit streams at the time of UES' creation reflect the Department's allocation over time of prior subsidies to BSC in accordance with the declining balance methodology (see section 355.49 of the Department's *Proposed Regulations*), as well as the effect of prior spin-offs of BSC productive units.

We next estimated the portion of the purchase price which represents repayment of prior subsidies by determining the portion of BSC's net worth that was accounted for by subsidies. To do that, we divided the face value of the allocable subsidies received by BSC in each year from fiscal

year 1977/78 through fiscal year 1984/85 (the year prior to the creation of UES) by BSC's net worth in the same year. We calculated a simple average of these ratios, which was then multiplied by the purchase price of the productive unit. Thus, we determined the amount of the purchase price which represents repayment of prior subsidies. This amount was subtracted from the subsidies attributed to BSC's Special Steels Business at the time of sale to arrive at the amount of subsidies allocated to UES in 1986.

Having determined the amount of BSC's previously bestowed subsidies allocable to UES with the Special Steels Business in 1986, we then determined the benefit provided to UES by these subsidies in 1992 and in 1993. To do this, we divided the subsidies allocated to UES by the net present value (in the year of the spin-off) of the future benefit streams from subsidies received by BSC prior to the spin-off. The resulting percentage for each year, which represents the portion of BSC's future benefit streams to be apportioned to UES, was then multiplied by the total benefit amount from BSC's previously bestowed subsidies that would have been allocated to BSC in 1992 and 1993 absent any spin-offs or privatization. This provides the benefits to UES in 1992 and 1993, respectively. We divided these benefit amounts by the company's total sales in 1992 and 1993, respectively, and preliminarily determine the net subsidy to be 3.76 percent *ad valorem* for 1992 and 2.68 percent *ad valorem* for 1993.

In determining the subsidies previously bestowed to BSC that were allocated to UES, we examined the following programs: equity infusions, Regional Development Grants, a National Loan Fund loan cancellation, and loans and interest rebates under ECSC Article 54.

(1) Equity Infusions

In every year from 1978/79 through 1985/86, BSC received equity capital from the Secretary of State for Trade and Industry pursuant to section 18(1) of the Iron and Steel Acts 1975, 1981, and 1982. According to section 18(1), the Secretary of State for the Department of Trade and Industry may ''pay to the Corporation (BSC) such funds as he sees fit.'' The Government of the United Kingdom's equity investments in BSC were made pursuant to an agreed external financing limit which was based upon medium-term financial projections. BSC's performance was monitored by the Government of the United Kingdom on an ongoing basis and requests for capital were examined on a case-by-case basis. The UK government did not receive any additional ownership, such as stock or additional rights, in return for the capital provided to BSC under section 18(1) since it already owned 100 percent of the company.

In Lead Bar (58 FR at 6241), the Department found BSC to be unequityworthy from 1978/79 through 1985/86, and thus determined that the Government of the United Kingdom's equity infusions were inconsistent with commercial considerations. Although, prior to the formation of UES, BSC's section 18(1) equity capital was written off in two stages (£3,000 million in 1981 and £1,000 million in 1982) as part of a capital reconstruction of BSC, the Department determined that BSC benefitted from these equity infusions, notwithstanding the subsequent write-off of equity capital. Therefore, the Department countervailed the equity investments as grants given in the years the equity capital was received. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

Because the Department determined in Lead Bar that the infusions are non-recurring benefits, we have allocated the benefits over the average useful life of renewable physical assets in the steel industry (15 years) in accordance with our non-recurring grant methodology (see section 355.49 of the Proposed Regulations; see also Certain Steel at 37230).

While uncreditworthiness was not specifically alleged or investigated during the investigation on lead bar, in the Final Countervailing Duty Determination; Certain Steel Products from the United Kingdom (58 FR 37393; July 9, 1993) (UK Certain Steel), the Department found that BSC was uncreditworthy from 1977/78 through 1985/86. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding. Therefore, to calculate the benefit from these grants, we have used a discount rate which includes a risk premium (see section 355.44(b)(6)(iv) of the Proposed Regulations).

After calculating the 1992 and 1993 allocation of subsidies from BSC to UES, as described above (Allocation of Subsidies From BSC to UES), we divided the subsidies allocated to UES for each year by the company's total sales of all products domestically-produced during the respective year. On this basis, we preliminarily determine the net subsidy for this program to be 3.35 percent *ad valorem* in 1992 and 2.38 percent *ad valorem* in 1993.

(2) Regional Development Grant Program

Regional development grants were paid to BSC under the Industry Act of 1972 and the Industrial Development Act of 1982. In order to qualify for assistance under these two Acts, an applicant had to be engaged in manufacturing and located in an assisted area. Assisted areas are older, industrial regions identified as having deep-seated, long-term problems such as high levels of unemployment, migration, slow economic growth, derelict land, and obsolete factory buildings.

Regional development grants were given for the purchase of specific assets. According to the Government of the United Kingdom, the program involved one-time grants, disbursed sometimes over several years.

BSC received regional development grants during the period between fiscal years 1978/79 and 1985/86. The Department found this program countervailable in Lead Bar (58 FR 6242), because it is limited to specific regions. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

In Lead Bar, we also determined that since each grant requires a separate application, these grants are non-recurring. Accordingly, we have calculated the benefits from this program by allocating the benefits over the average useful life of renewable physical assets in the steel industry (15 years) in accordance with our non-recurring grant methodology (see Certain Steel at 37227; see also section 355.49 of the Proposed Regulations). Since BSC was uncreditworthy from 1978/79 through 1985/86 (as discussed under Equity Infusions), we have used a discount rate which includes a risk premium (see section 355.44(b)(6)(iv) of the Proposed Regulations) to calculate the benefits from these grants. After calculating the 1992 and 1993 allocation of subsidies from BSC to UES, described above (Allocation of Subsidies From BSC to UES), we divided the subsidies allocated to UES for each year by the company's total sales in the respective year and calculated the *ad valorem* benefit for each year. On this basis, we preliminarily determine the net subsidies for this program to be 0.12 percent *ad valorem* for 1992 and 0.08 percent *ad valorem* for 1993.

(3) National Loan Funds Loan Cancellation

In conjunction with the 1981/1982 capital reconstruction of BSC, section 3(1) of the Iron and Steel Act of 1981 extinguished certain National Loans Fund (NLF) loans, as well as the accrued interest thereon, at the end of BSC's 1980/81 fiscal year. Because this loan cancellation was provided specifically to BSC, the Department determined in Lead Bar (58 FR 6242) that it provided a countervailable benefit. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

We calculated the benefit for this review using our standard methodology for non-recurring grants. We allocated the benefits from this loan cancellation over the average useful life of renewable physical assets in the steel industry (15 years) (see section 355.49 of the Proposed Regulations; see also Certain Steel at 37230); because BSC was found to be uncreditworthy in 1981/82 (as discussed under Equity Infusions), we have used a discount rate which includes a risk premium (see section 355.44(b)(6)(iv) of the Proposed Regulations). After calculating the 1992 and 1993 allocation of subsidies from BSC to UES, described above (Allocation of Subsidies From BSC to UES), we divided the subsidies allocated to UES for each year by the company's total sales in the respective year and calculated the *ad valorem* benefit for each year. On this basis, we preliminarily determine the net subsidies for this program to be 0.29 percent *ad valorem* for 1992 and 0.22 percent *ad valorem* for 1993.

(4) European Coal and Steel Community (ECSC) Article 54 Loans/Interest Rebates

The European Coal and Steel Community's (ECSC) Article 54 Industrial Investment loans are direct, long-term loans from the Commission of the European Communities to be used by the iron and steel industry for purchasing new equipment or financing modernization. The purpose of the program is to facilitate the borrowing process for companies in the ECSC, some of which may not otherwise be able to obtain loans. In UK Certain Steel, the Department determined that this program is limited to the iron and steel industry, and thus is countervailable to the extent that it provides loans on terms inconsistent with commercial considerations. No new information or evidence of changed circumstances was presented in this review to warrant a reconsideration of that finding.

In addition, interest rebates on Article 54 loans were granted to steel companies during the restructuring and modernization of the industry in the early 1980s. To qualify for the rebates, companies had to meet certain criteria, such as being in the process of reducing their steel production capacity or of implementing improvements in processing that would yield energy savings and improved efficiency.

The interest rebates, which were limited to a maximum of 3 percent of the total investment over a period of five years, were funded from the ECSC operational budget. While levies imposed on ECSC steel companies have provided the revenues for the operational budget since 1985, contributions by Member States supplemented the budget before that time. For this reason, the Department determined in UK Certain Steel that a portion of those interest rebates was countervailable. Following the same methodology in this review to determine the countervailable portion, we calculated the ratio of the contributions by Member States to the ECSC's total available funds for each year in which the rebates were given, and then multiplied this ratio by the rebate amount.

BSC received one Article 54 loan in fiscal year 76/77 and two Article 54 loans in fiscal year 77/78, all of which were provided in U.S. dollars and are still outstanding. BSC also received interest rebates during the first five years of the 76/77 loan. Because BSC qualified for the interest rebate at the time the loan was granted, we considered the rebate to constitute a reduction in the interest rate charged rather than a grant.

We considered the loan made to BSC during its creditworthy period (*i.e.*, in BSC's 76/77 fiscal year) separately from the two loans made during its uncreditworthy period (*i.e.*, in BSC's 77/78 fiscal year). For the Article 54 loan provided when BSC was creditworthy, we used as our benchmark the average U.S. long-term commercial rate for 1977. We used this rate because we did not have information on U.S. dollar loans borrowed in the UK in 1977. To calculate the benefit from this loan we employed our long-term loan methodology (see section 355.49(c)(1) of the Proposed Regulations). We then compared the amount of interest that would have been paid on the benchmark loan to the interest paid by BSC (factoring in the interest rebate as discussed above) and found that BSC's interest payments were higher than those it would have made on the benchmark loan. Therefore, we find that this particular loan was provided on terms consistent with commercial considerations.

For the loans provided when BSC was uncreditworthy, we used as our benchmark the highest U.S. lending rate available for long-term fixed rate loans at the time the loan was granted, plus a risk premium equal to 12 percent of the U.S. prime rate for 1977. See, Final Affirmative Countervailing Duty Determination: New Steel Rail, Except Light Rail, from Canada (54 FR 31991; August 3, 1989); see also, section 355.44(b)(6)(iv) of the Proposed Regulations. Again, we used a U.S. interest rate because we did not have information on U.S. dollar loans borrowed in the UK in 1977. We then compared the cost of the benchmark financing to the cost of the financing that BSC received under this program and found that the two Article 54 loans to BSC during its uncreditworthy period were provided on terms inconsistent with commercial considerations.

To calculate the benefit from these loans we used our long-term loan methodology (see section 355.49(c)(1) of the Proposed Regulations). Using this methodology and a benchmark discount rate which includes a risk premium (see section 355.44(b)(6)(iv) of the Proposed Regulations), we calculated the grant equivalent and allocated it over the life of the loans. Then we calculated the 1992 and 1993 allocation of subsidies from BSC to UES, as described above (Allocation of Subsidies From BSC to UES). We then divided the subsidies allocated to UES for each year by the company's total sales in the respective year to calculate the *ad valorem* benefit for each year. On this basis, we preliminarily determine the net subsidy for this program to be 0.0005 percent *ad valorem* for 1992 and 0.0004 percent *ad valorem* for 1993.

B. Subsidies Provided to UES

Assistance Under the Inner Urban Areas Act 1978

UES received two grants under the Inner Urban Areas Act, one in 1988 and one in 1992. Under this program, the Secretary of State for the Environment provides grants to 57 local authorities in the United Kingdom for the improvement of downtrodden urban areas. The Department of the Environment (DOE) selects these areas based upon census data. The local authorities submit program plans to the DOE for evaluation. Assistance is awarded on a discretionary basis depending on the quality of the proposed scheme and the benefit to the community, by either creating jobs or

improving the environment. Under Section 5 of the Act, a private company can apply for a grant to be used for environmental improvement (i.e., beautification of industrial areas). Approximately 10 percent of the money is given to private companies.

Because assistance under the Inner Urban Areas Act is awarded only to local authorities and companies located in selected regions of the United Kingdom, we conclude that payments under this program are countervailable (see the Memorandum for Paul L. Joffe from Joseph A. Spetrini, dated May 3, 1995, Administrative Review of the Countervailing Duty Order on Certain Hot-rolled Lead and Bismuth Carbon Steel Products which is on file in the Central Records Unit, Room B–099 of the Department of Commerce) (Memorandum). Further, because receipt of these grants is based on separate applications which have to meet the required criteria, and consistent with our determinations in Certain Steel (see 58 FR at 37726–7), we determine these grants to be non-recurring. Therefore, we have calculated the benefit for the POR using our standard methodology for non-recurring grants. Both of the grants received by UES under this program were less than 0.5 percent of UES Ltd.'s total sales, and thus were allocated to the year of receipt. On this basis, we preliminarily determine the net subsidies for this program to be 0.0012 percent *ad valorem* for 1992 and zero for 1993.

**II. Program Preliminarily Determined Not to Confer Subsidies**

*Article 55 Assistance*

UES received Article 55 assistance between 1989 and 1992 for a project involving multi-oxygen lances. Under Article 55 of the ECSC Treaty, assistance is made available to ''promote technical and economic research relating to the production and increased use of coal and steel and to occupational safety in the coal and steel industries.'' Since the end of 1986, this program has been funded solely through levies on steel producing companies.

Because the results of the research conducted under Article 55 are made publicly available, we find this program to be not countervailable (see Memorandum). Moreover, we note that to the extent that Article 55 assistance is funded solely by levies on steel companies, we would find no benefit.

**III. Programs Preliminarily Determined Not To Be Used**

We also examined the following programs and preliminarily determine that exporters of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom did not use them during the review period (see Memorandum; see also Memorandum For the File, ECSC Article 56(2)(b) from the Team, dated March 3, 1995, which is on file in the Central Records Unit, Room B–099 of the Department of Commerce):

(A) New Community Instrument Loans
(B) ECSC Article 54 Loan Guarantees
(C) NLF Loans
(D) ECSC Conversion Loans
(E) European Regional Development Fund Aid
(F) Article 56 Rebates
(G) Regional Selective Assistance
(H) ECSC Article 56(b)(2) Redeployment Aid
(I) BRITE/EuRAM II

*Preliminary Results of Review*

In accordance with 19 CFR 355.22(b)(1), an administrative review ''normally will cover entries or exports of merchandise during the most recently completed reporting year of the government of the affected country.'' However, because this is the first administrative review of this countervailing duty order, in accordance with 19 CFR § 355.22(b)(2), it covers the period, and the corresponding entries, ''from the date of suspension of liquidation * * * to the end of the most recently completed reporting year of the government of the affected country.'' This period is September 17, 1992 through December 31, 1993. Because the reporting year of the Government of the United Kingdom is the calendar year, we calculated a separate net subsidy for each year, 1992 and 1993.

Furthermore, during the 1993 calendar year, certain entries were not subject to suspension of liquidation. The Department issued its preliminary affirmative countervailing duty determination in the investigation on September 17, 1992 (57 FR 42974). On October 16, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), we aligned the final determination with the final determination in the companion antidumping duty investigation of the same merchandise (57 FR 48020; October 21, 1992). On November 6, 1992, at the request of respondents, we postponed both final determinations until January 11, 1993 (57 FR 53691; November 12, 1992), and on January 11, 1993, we postponed for a second time both determinations until January 19, 1993 (58 FR 4981; January 19, 1993).

Pursuant to section 705 of the Act and Article 5.3 of the GATT Subsidies Code, we cannot require suspension of liquidation for more than 120 days without the issuance of a countervailing duty order. Therefore, the Department instructed Customs to terminate the suspension of liquidation of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 15, 1993. The Department reinstated suspension of liquidation and required cash deposits of estimated countervailing duties of entries made on or after March 22, 1993, the date of the publication of the countervailing duty order. Merchandise entered on or after January 15, 1993 and before March 22, 1993 is to be liquidated without regard to countervailing duties.

For the period September 17, 1992 through December 31, 1992, we preliminarily determine the net subsidy to be 20.33 percent *ad valorem* for ASW Limited and 7.03 percent *ad valorem* for all other companies. For the periods January 1, 1993 through January 14, 1993, and March 22, 1993 through December 31, 1993, we preliminarily determine the net subsidy to be 20.33 percent *ad valorem* for ASW Limited, 2.68 percent *ad valorem* for United Engineering Steels (UES), and 9.76 percent *ad valorem* for all other companies.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the Customs Service to assess the following countervailing duties:

| Period | Company | Rate (percent) |
|---|---|---|
| September 17, 1992–December 31, 1992 | ASW Limited | 20.33 |
| | All other companies | 7.03 |
| January 1, 1993–January 14, 1993 | ASW Limited | 20.33 |
| | UES | 2.68 |
| | All other companies | 9.76 |
| March 22, 1993–December 31, 1993 | ASW Limited | 20.33 |
| | UES | 2.68 |
| | All other companies | 9.76 |

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 20.33 percent of the f.o.b. invoice price on all shipments of the subject merchandise from ASW Limited, 2.68 percent of the f.o.b. invoice price on all shipments of the subject merchandise from UES, and 9.76 percent of the f.o.b. invoice price on all shipments of the subject merchandise from all other companies, except Glynwed (which was excluded from the order during the original investigation), entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Interested parties may request disclosure of the calculation methodology and may request a hearing within 10 days of the date of publication. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with section 355.38(e) of the Commerce regulations.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 3, 1995.

**Paul L. Joffe,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 95–11530 Filed 5–9–95; 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:* 95–028. *Applicant:* University of Rhode Island, Graduate School of Oceanography, Narragansett, RI 02882. *Instrument:* Chlorophyll Fluorescence Measuring System, Model PAM 101. *Manufacturer:* Heinz Walz GmbH, Germany. *Intended Use:* The instrument will be used to perform fluorescence measurements on natural and experimental phytoplankton to ascertain characteristics of productivity. *Application Accepted by Commissioner of Customs:* April 6, 1995.

*Docket Number:* 95–029. *Applicant:* University of Minnesota, Department of Civil Engineering, 500 Pillsbury Drive SE, Minneapolis, MN 55455. *Instrument:* Gyratory Compactor. *Manufacturer:* Invelop Oy, Finland. *Intended Use:* The instrument will be used for studies of typical asphalts with polymer modified binders and portions of mineral aggregates with such materials as recycled tire rubber, glass, and roofing shingles. Experiments will be conducted to determine changes in angle and speed of gyration, axial confinement, and sample size required to most closely approximate field compaction conditions, shear resistance and in-place volumetrics. This instrument will also be used for teaching purposes in the Civil Engineering Department courses on Bituminous Mixtures (CE 5701) and Special Topics in Research (CE 8089). *Application Accepted by Commissioner of Customs:* April 7, 1995.

*Docket Number:* 95–031. *Applicant:* University of Maryland, Linguistics Department, 1401 Marie Mount Hall, College Park, MD 20742-7515. *Instrument:* Monocular Oculometer for the Human Eye. *Manufacturer:* Dr. Bouis, Germany. *Intended Use:* The instrument will be used to record eye movements during continuous reading of individual sentences and text in experiments involving individual subjects tested on linguistic materials. *Application Accepted by Commissioner of Customs:* April 10, 1995.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 95–11528 Filed 5–9–95; 8:45 am]

BILLING CODE 3510–DS–F

## Minority Business Development Agency

## Solicitation of Business Development Center Applications for Charleston, SC and Brooklyn, NY

**AGENCY:** Minority Business Development Agency, Commerce.

**SUMMARY:** In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Minority Business Development Center (MBDC) listed in this document.

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To

this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Proper identification is required for entrance into any Federal building.

**DATES:** The closing date for applications for each MBDC is listed below:

**ADDRESSES:** Completed application packages should be submitted on or before the closing date to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:** The following are MBDCs for which applications are solicited:

1. MBDC Application: Charleston
   Metropolitan Area Serviced: Charleston, South Carolina
   Award Number: 04–10–95013–01
   Closing Date for Applications: June 16, 1995
   For Further Information and an Application Package, Contact: Robert Henderson, Regional Director, (404) 730–3300
   Pre-Application Conference: May 31, 1995, at 9:00 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, N.W., Suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.
   Cost of Performance Information: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1995 to October 31, 1996, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.
2. MBDC Application: Brooklyn
   Metropolitan Area Serviced: Brooklyn, New York
   Award Number: 02–10–95012–01
   Closing Date for Applications: June 19, 1995
   For Further Information and an Application Package, Contact: Heyward Davenport, Regional Director, at (212) 264–3262
   Cost of Performance: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1995 to October 31, 1996, is estimated at $343,676. The total Federal amount is $292,125 and is composed of $285,000 plus the Audit Fee amount of $7,125. The application must include a minimum cost share of 15%, $51,551 in non-federal (cost-sharing) contributions for a total project cost of $343,676. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

Standard Paragraphs—The following information and requirements are applicable to the above-listed MBDCs.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

*Pre-Award Costs*—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

*Outstanding Account Receivable*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

*Name Check Policy*—All non-profit and for-profit applicants are subject to a name check review process. Name

checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

*Award Termination*—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

*False Statements*—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

*Primary Applicant Certifications*—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

*Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR Part 26, § 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

*Drug Free Workplace*—Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

*Anti-Lobbying*—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

*Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

*Lower Tier Certifications*—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

*Buy American-made Equipment or Products*—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

May 4, 1995.

**Donald L. Powers,**

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 95–11461 Filed 5–9–95; 8:45 am]

**BILLING CODE 3510–21–P**

---

## National Oceanic and Atmospheric Administration

**[I.D. 050195E]**

## Small Takes of Marine Mammals Incidental to Specified Activities; Lockheed Launch Vehicles at Vandenberg Air Force Base, CA

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

**ACTION:** Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

**SUMMARY:** NMFS has received a request from Lockheed Environmental Systems and Technologies Company, Las Vegas, NV (Lockheed) for authorization to take small numbers of harbor seals by harassment incidental to launches of Lockheed's launch vehicles at Space Launch Complex 6 (SLC–6), Vandenberg Air Force Base, CA (Vandenberg). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize Lockheed to incidentally take, by harassment, small numbers of harbor seals in the vicinity of Vandenberg for a period of 1 year.

**DATES:** Comments and information must be received no later than June 9, 1995.

**ADDRESSES:** Comments on the application should be addressed to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application and the references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed below.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Craig Wingert, Southwest Regional Office at 310–980–4021.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s); will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses; and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 30, 1994, the President signed Public Law 103–238, The Marine Mammal Protection Act Amendments of 1994. One part of this law added a new subsection 101(a)(5)(D) to the MMPA to establish an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

'' * * *any act of pursuit,torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal

stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.''

New subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

**Summary of Request**

On March 13, 1995, NMFS received an application from Lockheed requesting an authorization for the harassment of small numbers of harbor seals incidental to launches of Lockheed's launch vehicles (LLV) at SLC–6, Vandenberg. These launches would place commercial payloads into low earth orbit using its family of vehicles (LLV–1, LLV–2 and LLV–3). Because of the requirements for circumpolar trajectories of the LLV and its payloads, the use of SLC–6 is the only feasible alternative within the United States. Lockheed intends to launch approximately 2 LLVs during the period of this proposed 1–yr authorization (Air Force, 1995)[1]. As a result of the noise associated with the launch itself and the resultant sonic boom, these noises have the potential to cause a startle response to those harbor seals which haul out on the coastline south and southwest of Vandenberg and possibly on the northern Channel Islands. Launch noise would be expected to occur over the coastal habitats in the vicinity of SLC–6 while low-level sonic booms could be heard on the Channel Islands, specifically San Miguel Island (SMI) and Santa Rosa Island (SRI).

**Description of Habitat and Marine Mammal Affected by LLVs**

The Southern California Bight (SCB) including the Channel Islands, support a diverse assemblage of pinnipeds (seals and sea lions). California sea lions(*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*) and northern fur seals (*Callorhinus ursinus*) breed there, with the largest rookeries on SMI and San Nicolas Island (Stewart et al., in press). Until 1977, a small rookery of Steller sea lions (*Eumetopias jubatus*) existed on SMI. However, there has been no breeding there since 1981 and no sightings since 1984 (Stewart et al., in press). Guadalupe fur seals (*Arctocephalus townsendi*) breed only on Isla de Guadalupe offshore Baja California, Mexico, but occasionally some are seen on the Channel Islands. More detailed descriptions of the SCB and its associated marine mammals can be found elsewhere (56 FR 1606, January 16, 1991).

**Harbor Seals**

The Pacific harbor seal, which ranges from Baja California to the eastern Aleutian Islands, is the only marine mammal expected to be incidentally harassed by LLV launches from Vandenberg and therefore needs to be discussed in some detail. Harbor seals are considered abundant throughout most of their range and have increased substantially in the last 20 years. Hanan and Beeson (1994) reported 18,099 seals counted on the mainland coast and islands of California during May and June, 1993. Using that count and Boveng's (1988) correction factor (1.4 times the count) for animals not hauled out, gives a best population estimate of 25,339 harbor seals in California.

On the coastlines of South Vandenberg AFB, harbor seals are noted near Point Arguello, at the mouth of Oil Well Canyon, in the area surrounding Rocky Point and near the Boathouse Breakwater (Air Force, 1995). The largest aggregations occur during the spring and early summer. In 1986, 500 harbor seals were censused at these sites (Hanan et al., 1987). In the spring, approximately 70 harbor seals may be found at Rocky Point, immediately south of SLC–6 (Air Force, 1995).

On SMI during the breeding season, the population is estimated to be about 1,000 - 1,200 harbor seals (Hanan et al., 1993). Numbers are lowest in December, increase gradually from February to June, then sharply decrease again to a minimum in December. Pups are born from February through May. Pups nurse for about 4 weeks; nursing extends to at least the end of May. Breeding activities occur from mid-April to mid-June.

Harbor seals haulout onto dry land for various biological reasons, including sleep (Krieber and Barrette, 1984; Terhune, 1985), predator avoidance and thermoregulation (Barnett, 1992). As harbor seals spend most of the evening and nighttime hours in the ocean (Bowles and Stewart, 1980), hauled-out seals spend much of their daytime hours in apparent sleep (Krieber and Barrette, 1984; Terhune, 1985). In addition to sleep, seals need to leave the ocean to avoid aquatic predators and excessive heat loss to the sea water (Barnett, 1992).

However, the advantages of hauling out are counterbalanced by dangers of the terrestrial environment including predators. In general, because of these opposing biological forces, haulout groups are temporary, unstable aggregations (Sullivan, 1982). The size of the haulout group is thought to be an anti-predator strategy (da Silva and Terhune, 1988). By increasing their numbers at a haulout site, harbor seals optimize the opportunities for sleep by minimizing the requirement for individual vigilance against predators (Krieber and Barrette, 1984). This relationship between seals and their predators is thought to have represented a strong selection pressure for startle behavior patterns (da Silva and Terhune, 1988). As a result, harbor seals, which have been subjected to extensive predation or hunting, rush into the water at the slightest alarm. Startle response in harbor seals can vary from a temporary state of agitation by a few individuals to the complete abandonment of the beach area by the entire colony. Normally, when harbor seals are frightened by noise, or the approach of a boat, plane, human, or other potential predator, they will move rapidly to the relative safety of the water. Depending upon the severity of the disturbance, seals may return to the original haulout site immediately, stay in the water for some length of time before hauling out, or haulout in a different area. When disturbances occur late in the day, harbor seals may not haulout again until the next day.

Disturbances have the potential to cause a more serious effect when herds are pupping or nursing, when aggregations are dense, and during the molting season. However, evidence to date has not indicated that anthropogenic disturbances have resulted in increased mortality to harbor seals. Bowles and Stewart (1980) for example, found that harbor seals tendency to flee, and the length of time before returning to the beach, decreased during the pupping season. They also found that maternal-pup separations in crowded colonies are considered frequent, natural occurrences that can result from several causes, including normal female-female or male-female interactions. Both factors apparently giving some protection to young seals from the startle response of the herd.

Potential Effects of LLV Launches on Marine Mammals

The effect on pinnipeds, particularly harbor seals, would be disturbance by sound which is anticipated to result in a negligible short-term impact to small

[1] A list of references used in this document can be obtained by writing to the address provided above (see **ADDRESSES**).

numbers of harbor seals that are hauled out at the time of LLV launches. No impacts are anticipated to animals that are in the water at the time of launch.

The Air Force funded several studies in anticipation of launching the space shuttle from Vandenberg. In addition, monitoring studies have been conducted on pinnipeds during launches of the Titan IV at SLC–4 (Stewart and Francine, 1992; Stewart et al., 1992 and 1993). On SMI, time-lapse photographic monitoring (Jehl and Cooper, 1982) show that in response to a specific stimulus, large numbers of pinnipeds move suddenly from the shoreline to the water. These events occur at a frequency of about 24 to 36 times per year for sea lions and seals other than harbor seals, and about 48 to 60 times annually for harbor seals. Visual stimuli such as humans and low-flying aircraft are much more likely to elicit this response than strictly auditory stimuli such as boat noise or sonic booms, which currently occur about 8 times a month. Observations indicated that it is rare for mass movement to take place in a panic, and no resulting pup or adult mortality has been observed under these circumstances.

**South Vandenberg**

At South Vandenberg, launch noises are expected to impact only harbor seals as other marine mammals are not known to haulout at these sites with any frequency. The launch noise associated with the LLV under typical conditions would be about 93 dBA (118 dB) at the harbor seal haul-out areas which are about 1.5 mi (2.4 km) to the south and southwest of SLC–6 (Buhaly, 1993). This level would be much less than anticipated launch noises of either the Space Shuttle or Titan IV/Centaur at similar distances (approximately 120 dBA/144 dB for Titan IV) for which small take authorizations have been issued in the past. In addition, the seaward aspects of the cliffs throughout much of the coastal area are expected to buffer the haul-out areas from launch noises during the earliest stages of LLV launches (USAF, 1995).

As part of the small take authorization for Titan IV launches at SLC–4 (approximately 4.8 mi (7.7 km) north of Rocky Point), the U.S. Air Force has monitored the effects of launch noises on hauled out harbor seals (Stewart and Francine, 1992; Stewart et al., 1992 and 1993). For four monitored launches, the sound exposure level ranged from 98.7 - 101.8 dBA (145 dB) (Stewart et al., 1993), a noise level that is similar to an F–16 jet overflight, although lower in frequency. This sound pressure level is approximately 20 dB less than predicted theoretically.

During the 1992 and 1993 Titan IV launches, all or almost all, harbor seals that were ashore (1992–23 of 28; 1993–41 of 41) at the time fled into the water in response to the noise. In 1993 about 75 percent of those seals returned ashore later that day, most within 90 minutes of the disturbance (Stewart et al., 1993). No mortalities were reported at South Vandenberg as a result of any of the four monitored launches. As the LLV launches create less noise than the Titan IV, fewer harbor seals are expected to react to the launch noise.

**Northern Channel Islands**

Depending upon the intensity and location of a sonic boom, pinnipeds on SMI or SRI may exhibit an alert response or stampede into the water. However, while it is highly probable that focused sonic booms from LLVs would occur over the Channel Islands, maximum overpressures of these sonic booms are estimated to be 1.0 pound/foot$^2$ (psf) over the northern part of SMI (Air Force, 1995). A sonic boom with an overpressure of 1.0 psf or less is not considered significant (equivalent to hearing two hands clapped together at a distance of one foot).

The sonic booms resulting from launches of the LLV will vary with the type of vehicle and the specific ground location. For example, the sonic boom from LLV–3 (the largest of the LLV rockets) is not expected to intersect any portion of the northern Channel Islands, but instead will focus on the open water southwest of the Islands. Also, while it is predicted that launches of the LLV 1 and LLV 2 will produce sonic booms over portions of the Channel Islands, the maximum overall sound pressure levels is not expected to exceed 80 dBA and in most cases will not exceed 70 dBA (Air Force, 1995). These sonic boom levels are likely to be indistinguishable from background noises caused by wind and surf (Air Force, 1995).

Monitoring of the effects of noise generated from Titan IV launches on SMI pinnipeds in 1991 (Stewart et al., 1992) demonstrated that noise levels from a sonic boom of 133 dB (111.7 dBA) caused an alert response by small numbers of California sea lions, but no response from other pinniped species present (including harbor seals). In 1993, an explosion of a Titan IV created a sonic boom-like pressure wave and caused approximately 45 percent of the California sea lions (approximately 23,400, including 14–15,000 1-month old pups, were hauled-out on SMI during the launch) and 2 percent of the northern fur seals to enter the surf zone. Although, approximately 15 percent of the sea lion pups were temporarily abandoned when their mothers fled into the surf, no injuries or mortalities were observed. Most animals were returning to shore within 2 hours of the disturbance (Stewart et al., 1993).

Since the noise level from LLV launches is expected to be well below both these levels and the threshold criteria of 101 dBA identified by Stewart et al. (1993), no incidental harassment takings are anticipated to occur on the northern Channel Islands.

**Mitigation**

Unless constrained by other factors including but not limited to, human safety, national security or launch trajectories, efforts to ensure minimum negligible impacts of LLV launches on harbor seals and other pinnipeds are proposed for inclusion in the Incidental Harassment Authorization. These proposals include:

1. Avoidance whenever possible of launches during the harbor seal pupping season of February through May;
2. Preference for launches after June 1 and prior to December 1; and,
3. Preference for night launches during the period when harbor seals are hauled out in any numbers.

**Monitoring**

NMFS proposes that the Holder of the Incidental Harassment Authorization will monitor the impact of LLV launches on the harbor seal haulouts at Rocky Point or in the absence of harbor seals at that location, at another South Vandenberg location, and on the northern part of SMI during the 1-year period of authorization in order to verify the assumptions made in this finding. A report on this monitoring program will be required to be submitted prior to next year's authorization request. A determination will be made at that time on the need to continue monitoring future launches at these locations.

**Conclusions**

The short-term impact of the launching of LLVs are expected to result at worst, in a temporary reduction in utilization of the haulout as seals leave the beach for the safety of the water. The launching is not expected to result in any reduction in the number of seals, and they are expected to continue to occupy the same area. In addition, there will not be any impact on the habitat itself. Based upon studies conducted for previous space vehicle launches at Vandenberg, significant long-term impacts on harbor seals at Vandenberg and the northern Channel Islands are unlikely.

There is no known recent subsistence use of harbor seals in southern California.

### Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for launches of the LLV at SLC–6 provided the above mentioned monitoring and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed launches of the LLV at SLC–6 would result in the harassment taking of only small numbers of harbor seals, will have a negligible impact on the harbor seal stock and will not have an unmitigable adverse impact on the availability of this stock for subsistence uses.

### Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: May 4, 1995.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 95–11537 Filed 5–9–95; 8:45 am]

BILLING CODE 3510–22–F

## COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECRECY

### Notice of Meeting

This notice announces the second in a series of monthly meetings of the Commissioners of the Commission on Protecting and Reducing Government Secrecy. Pursuant to Title IX of Public Law 103–236, dated April 30, 1994, the Commission consists of twelve members, four appointed by the President, two each by the Speaker of the House and the House Minority Leader and two each by the Senate Majority and Minority Leaders. The Commission will remain in effect for two years from the date of its first meeting.

*Time and Date:* 3:00 p.m., May 17, 1995.

*Place:* S–116, Committee on Foreign Relations Hearing Room, The Capitol.

*Status:* Open.

*Matters to be Considered:* 1. The President's Executive Order 12958, signed April 17, 1995, on classified national security information, and related matters on classification policy.

*Contact Person for more Information:* Eric Biel, Staff Director, Commission on Protecting and Reducing Government Secrecy, (202) 857–0002; FAX (202) 457–0128.

**Eric Biel,**

*Staff Director, Commission on Protecting and Reducing Government Secrecy.*

[FR Doc. 95–11512 Filed 5–9–95; 8:45 am]

BILLING CODE 6820–ER–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Date of Meeting:* 23 & 24 May 1995.

*Time of Meeting:* 0930–1700, 23 & 24 May 1995.

*Place:* Pentagon and Ft. Gordon.

*Agenda:* The Army Science Board (ASB) C4I Issue Group will commence an Issue Group Study on ''A Strategy for Leveraging Commercial Technologies for Future Army Radios.'' These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 95–11453 Filed 5–9–95; 8:45 am]

BILLING CODE 3710–08–M

### Notice

**AGENCY:** Board of Visitors, United States Military Academy.

**ACTION:** Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following meeting:

*NAME OF COMMITTEE:* Board of Visitors, Untied States Military Academy.

*DATE OF MEETING:* 19 May 1995.

*START TIME OF MEETING:* 8:00 a.m.

*PLACE:* West Point, New York.

*PROPOSED AGENDA:* Annual Program Review; West Point Child Development Center and West Point School Briefing; Class of 1999 Admission Status; Presentation on Alternate Funding; and Selection of Dates for Visits to Summer Training. All proceedings are open.

*FOR FURTHER INFORMATION CONTACT:* Lieutenant Colonel John J. Luther, United States Military Academy, West Point, NY 10996–5000, (914) 938–5870.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 95–11457 Filed 5–9–95; 8:45 am]

BILLING CODE 3710–08–M

### Extension of Comment Period Deadline From May 12, 1995 to June 12, 1995 for Requested Comments on MTMC's Consideration To Employ Full-Service Contracts To Improve the Department of Defense (DOD) Personal Property Program

**AGENCY:** Military Traffic Management Command, DOD.

**ACTION:** Extension.

**SUMMARY:** Reference **Federal Register**, Volume 60, Number 48, page 13412, notice of MTMC's Consideration to Employ Full-Service Contracts to Improve the Department of Defense Personal Property Program published on March 13, 1995. The evolving Defense environment encompasses a smaller uniformed force, less overseas basing, reduced funding, and diminished staffing of support activities. These changes will directly affect quality of life issues for the military service members and their families. The Secretary of Defense has placed quality of life as one of the highest priorities in the Department. The intangible value of a good standard of living sets the stage for a high quality, well-trained and motivated force. Therefore, an opportunity exists for the Department to acquire a higher standard of service in the movement of service members' and their families' household goods, which in turn contributes to improved quality of life. The Military Traffic Management Command (MTMC) is engaged in an effort to simplify current processes, control program costs, and ensure quality of service by performing a reengineering of the existing DOD Personal Property Program. This reengineering effort will adopt, to the fullest extent possible, commercial business processes characteristic of world-class customers and suppliers and relieve carriers of DOD unique terms and conditions. It will also focus on the customer, reward results, foster competition, and seek excellence of vendor performance.

**DATES:** Comments must be received by June 12, 1995.

**ADDRESSES:** Mail comment to Headquarters, Military Traffic Management Command, ATTN: MTOP–Q, 5611 Columbia Pike, Falls Church, VA 22041–5050.

**FOR FURTHER INFORMATION CONTACT:** Ann Gibson, MTOP–QS, (703) 756–1590.

**SUPPLEMENTARY INFORMATION:** An alternative business process being considered is competitively acquiring personal property services through use of long-term, full-service contracts under the Federal Acquisition Regulation (FAR). Under this alternative, MTMC would competitively select full service contractor(s) for defined regions. The contractor(s) selected for each region would be responsible for all management, administrative, and operational functions currently performed by PPSOs (Personal Property Shipping Offices), PPPOs (Personal Property Processing Offices), and carriers. PPSO and PPPO functions include, but are not limited to, service member counseling, shipping document preparation, management report generation, arranging movement of all types of domestic and international outbound shipments, managing the storage and delivery of all types of domestic and international inbound shipments, managing long term storage, and evaluation of performance and customer satisfaction. Carrier functions include, but are not limited to, pre-move surveys, shipment packing, onward shipment movement, storage-in-transit, long term storage, shipment delivery, shipment unpacking, and claims settlement.

Under this proposed contracting approach, subcontracting goals will be included to ensure capability (particularly during the peak season) and continued viability of small, small disadvantaged, and women-owned carriers.

In formulating comments, the following issues should be considered: The ability to expand operations during emergencies or during peak shipping season; subcontracting, specifically to small, small and disadvantaged, and women-owned businesses; the ability to manage the movement of all types of personal property shipments, to include, but not limited to, unaccompanied baggage, household goods, mobile homes, and boats; the ability to manage administrative processes, to include, but not limited to, methods for billing and payment of transportation and transportation related charges; direct settlement with property owners for loss and/or damage claims; establishment of rate structures; establishment of performance evaluation criterion; and management of long and short term storage.

If this alternative business practice is pursued, the carrier industry will also be afforded the opportunity to comment on a draft solicitation, as well as to attend pre-solicitation and pre-proposal conferences.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

[FR Doc. 95–11465 Filed 5–9–95; 8:45 am]

BILLING CODE 3710–08–M

---

## Corps of Engineers

### Intent To Prepare a Draft Joint Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the Los Angeles County Drainage Area Water Conservation and Supply Study, Hansen and Lopez Reservoirs, Los Angeles County, California

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Los Angeles District will prepare a joint EIS/EIR to evaluate the feasibility of establishing both a year-round water conservation pool and seasonal water supply pool at Hansen Reservoir and a year-round water conservation pool at Lopez Reservoir. Both reservoirs are located in the San Fernando Valley area of Los Angeles County and both are components of the Los Angeles County Drainage Area (LACDA) system. The study was developed in response to local concerns regarding future water supply sources, given continued regional population growth, dwindling imported water supplies, and continued increases in the cost of water. Establishment of water conservation at these reservoirs would increase groundwater reserves by extending the period water is available for release to downstream spreading grounds.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS/EIR can be answered by: Mr. Gary Gunther, Study Manager, (213) 894–3825, or Mr. William Butler, Environmental Manager, (213) 894–0245, P.O. Box 2711, Los Angeles, California 90053–22325.

**SUPPLEMENTARY INFORMATION:**

#### a. Authority

Study authority is provided under authority of the Energy and Water Development Appropriations Act of 1993 (Pub. L. 102–377).

#### b. Proposed Action/Alternatives

The proposed action for Hansen Reservoir would utilize the existing debris pool up to elevation 1010.5 ft NGVD and portions of the flood control pool on a seasonable basis up to elevation 1040.0 ft NGVD for water conservation purposes.

The proposed action for Lopez Reservoir would utilize the entire debris pool storage volume (elevation 1,272.92 feet) for year-round water conservation. Releases would match the intake capacity of the downstream spreading grounds. No seasonal pool is proposed.

#### c. Scoping

An extensive mailing list has been developed which includes Federal, State and local agencies and other interested public and private organizations and parties. Individuals on the mailing list will be sent a copy of each notice announcing a public scoping meeting. An initial public scoping meeting was held on March 21, 1995. Additional public meetings will be scheduled during the review period for the draft EIS/EIR. Specific meeting dates, times, and places will be published in local newspapers. Formal coordination with the appropriate Federal, State and local agencies has begun.

#### d. Potentially Significant Issues

Potentially significant issues identified include impacts to land and water use, biological resources including endangered species and riparian resources, recreation and cultural resources, and sand and gravel mining operations.

#### e. Availability of the Draft EIS/EIR

The draft EIS/EIR is expected to be available to the public for review and comment beginning in September of 1997.

#### f. Comments

Comments and questions regarding the project may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, ATTN: Mr. Gary Gunther, CESPL–PD–WA, or Mr. William Butler, CESPL–PD–RN, P.O. Box 2711, Los Angeles, California 90053–2325.

Dated: April 14, 1995.

**Michael R. Robinson,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 95–11455 Filed 5–9–95; 8:45 am]

BILLING CODE 3710–KF–M

## Intent To Prepare a Draft Joint Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) for the Los Angeles County Drainage Area Water Conservation and Supply Study, Whittier Narrows and Santa Fe Reservoirs, Los Angeles County, California

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The Los Angeles District will prepare a joint EIS/EIR to evaluate the feasibility of establishing both a year-round water conservation pool and seasonal water supply pool at Whittier Narrows and Santa Fe Reservoirs. Both reservoirs are located in the San Gabriel Valley area of Los Angeles County and both are components of the Los Angeles County Drainage Area (LACDA) system. The study will also investigate the potential feasibility of integrating the operations of various county-operated detention facilities in the upper watershed with water conservation and supply at Whittier and Santa Fe. The study was developed in response to local concerns regarding future water supply sources, given continued regional population growth, dwindling imported water supplies, and continued increases in the cost of water. Establishment of water conservation at these reservoirs would increase groundwater reserves by extending the period water is available for release to downstream spreading grounds.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and DEIS/EIR can be answered by: Ms. Colette Diede, Study Manager, (213) 894–5440, or Ms. Lois Goodman, Environmental Manager, (213) 894–0535, P.O. Box 2711, Los Angeles, California 90053–22325.

**SUPPLEMENTARY INFORMATION:**

### a. Authority

Study authority is provided under authority of the Energy and Water Development Appropriations Act of 1993 (Public Law 102–377).

### b. Proposed Action/Alternatives

The proposed action for Santa Fe Reservoir is to utilize the existing debris pool up to elevation 456.0 NGVD for year-round water conservation and portions of the flood control pool up to the elevation 459.0 NGVD on a seasonal basis for water conservation purposes.

The proposed action for Whittier Narrows Reservoir would utilize the existing debris pool up to elevation 206.0 NGVD for year-round water conservation and portions of the flood control pool up to elevation 209.0 on a seasonal basis for water conservation purposes.

Another element of this study would investigate the feasibility of integrating the operation of various county-run dentation basins in the upper watershed within the operations at Santa Fe and Whittier Narrows.

### c. Scoping

An extensive mailing list has been developed which includes Federal, State and local agencies and other interested public and private organizations and parties. Individuals on the mailing list will receive a copy of the initial notice and all subsequent notices announcing additional scoping meetings. An initial public scoping meeting was held on March 23, 1995. Additional public meetings will be scheduled during the review period for the draft EIS/EIR. Specific meeting dates, times, and places will be published in local newspapers. Formal coordination with the appropriate Federal, State and local agencies has begun.

### d. Potentially Significant Issues

Potentially significant issues identified include impacts to land and water use, biological resources including endangered species and riparian resources, and recreation and cultural resources.

### e. Availability of the Draft EIS/EIR

The draft EIS/EIR is expected to be available to the public for review and comment beginning in September of 1997.

### f. Comments

Comments and questions regarding the project may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, ATTN: Ms. Colette Diede, CESPL–PD–WA, or Ms. Lois Goodman, CESPL–PD–RL, P.O. Box 2711, Los Angeles, California 90053–2325.

Dated: April 14, 1995.

**Michael R. Robinson,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 95–11456 Filed 5–9–95; 8:45 am]

BILLING CODE 3710–KF–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG95–44–000, et al.]**

## Northern American Energy Services Co., et al.; Electric Rate and Corporate Regulation Filings

May 3, 1995.

Take notice that the following filings have been made with the Commission:

### 1. Northern American Energy Services Co.

[Docket No. EG95–44–000]

On April 21, 1995, North American Energy Services Company, a Washington corporation (''Applicant''), with its principle executive office at Issaquah, Washington, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations (the ''Application'').

Applicant has entered into an operation and maintenance agreement with Turbine Power Co. S.A., a copy organized under the laws of the Republic of Argentina, to operate and maintain a 123-megawatt natural gas-fired, electric power generating facility located at General Roca, Argentina (the ''Project''). Project facilities also include a gas pipeline that interconnects with a regional gas carrier's pipeline, a natural gas processing unit, and a 132-Kv switching station which is interconnected with a 132-Kv transmission line owned by Energia Rio Negro Sociedad del Estado (''ERSE''), the state-owned electric company of the Province of Rio Negro, Republic of Argentina. The Project is expected to commence generating electric power during March 1995. All of the power generated at the Project will be sold at wholesale by the Project's owner, Turbine owner Co. S.A., to ERSE pursuant to a purchase and sale agreement.

*Comment date:* May 23, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 2. The Hub Power Company Limited

[Docket No. EG95–46–000]

Take notice that on April 28, 1995, The Hub Power Company Limited, a Pakistani corporation, filed with the Federal Energy Regulatory Commission an application for determination of

exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that is engaged directly and exclusively in developing, owning and operating a 1292 MW (gross) oil-fired electric power production facility in Pakistan.

*Comment date:* May 23, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**3. Entergy Power Asia Ltd.**

[Docket No. EG95–47–000]

Take notice that on April 28, 1995, Entergy Power Asia Ltd., Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

The applicant states that it is a corporation that is engaged directly or indirectly and exclusively in owning or operating, or both owning and operating, electric power facilities. The applicant further states that it has previously been found to be an exempt wholesale generator. According to the Applicant, this application is occasioned by the applicant's intended acquisition of an indirect ownership interest in a 1292 MW oil-fired electric generating facility located in the Pakistani province of Balochistan.

*Comment date:* May 23, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**4. Entergy Power Operations Corp.**

[Docket No. EG95–48–000]

Take notice that on April 28, 1995, Entergy Power Operations Corporation, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

Applicant states that it is a corporation that is engaged directly or indirectly and exclusively in owning or operating, or both owning and operating, electric power facilities and selling electric energy. Applicant further states that it intends initially to engage, indirectly, in operating a 200 MW coal-fired eligible facility located in Sibolga, Sumatra Utara in the province of North Sumatra, Indonesia.

*Comment date:* May 23, 1995, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**5. PacifiCorp**

[Docket No. ER95–646–000]

Take notice that on April 21, 1995, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, an amended filing in this Docket.

Copies of this filing were supplied to the City of Anaheim, California, the Public Utilities Commission of the State of California, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

*Comment date:* May 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**6. Vermont Electric Power Co.**

[Docket No. ER95–741–000]

Take notice that on April 26, 1995, Vermont Electric Power Company tendered for filing a request to postpone the effective date for the Supplement to its 1991 Transmission Agreement, Rate Schedule No. 246, filed on March 13, 1995 from May 1, 1995 to May 25, 1995.

*Comment date:* May 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**7. Louisville Gas and Electric Co.**

[Docket No. ER95–926–000]

Take notice that on April 18, 1995, Louisville Gas and Electric Company tendered for filing a copy of a service agreement between Louisville Gas and Electric Company and ENRON Power Marketing, Inc. under Rate GSS.

Notice is also given that the service agreement listed below and filed with the Federal Energy Regulatory Commission Gas and Electric Company is to be cancelled.

| Date of agreement | Purchaser | Cancellation date | Cancellation effective |
|---|---|---|---|
| 4/5/95 | ENRON Power Marketing, Inc ..... | 4/5/95 | 4/5/95 |

*Comment date:* May 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**8. Central Hudson Gas & Electric Corp.**

[Docket No. ER95–944–000]

Take notice that Central Hudson Gas and Electric Corporation (Central Hudson) on April 24, 1995, tendered for filing its development of actual costs for 1994 related to transmission service provided from the Roseton Generating Plant to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule FERC No. 42.

The actual costs for 1994 amounted to $0.9973 per Mw.-day to Con Edison and $3.7517 per Mw.-day to Niagara Mohawk and are the basis on which charges for 1995 have been estimated.

Central Hudson requests waiver on the notice requirements to permit charges to become effective January 1, 1995 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the State of New York Public Service Commission.

*Comment date:* May 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–11477 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–P

---

**[Docket No. MG95–1–002]**

## Algonquin LNG, Inc.; Notice of Filing

May 4, 1995.

Take notice that on April 28, 1995, Algonquin LNG, Inc. (Algonquin LNG),

submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order No. 566–A.[2] Algonquin LNG states that it is revising its standards of conduct to reflect the Commission's April 17, 1995, Order on Standards of Conduct.[3]

Algonquin LNG states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–11433 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (1988) (Regulations Preambles 1986–1990); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 30,868 (1989) (Regulations Preambles 1986–1990); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. ¶ 30,908 (1990) (Regulations Preambles 1986–1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed, Conoco, Inc.* v. *FERC,* D.C. Cir. Docket No. 94–1745 (December 14, 1994).

[3] 71 FERC ¶ 61,054 (1995).

**[Docket No. MG88–2–008]**

## Algonquin Gas Transmission Company; Notice of Filing

May 4, 1995.

Take notice that on April 28, 1995, Algonquin Gas Transmission Company (Algonquin), submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order No. 566–A.[2] Algonquin states that it is revising its standards of conduct to reflect the Commission's April 17, 1995, Order on Standards of Conduct.[3]

Algonquin states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 19, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–11432 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. ¶ 30,820 (1988) (Regulations Preambles 1986–1990); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. ¶ 30,868 (1989) (Regulations Preambles 1986–1990); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. ¶ 30,908 (1990) (Regulations Preambles 1986–1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed, Conoco, Inc.* v. *FERC,* D.C. Cir. Docket No. 94–1745 (December 14, 1994).

[3] 71 FERC ¶ 61,054 (1995).

**[Docket No. RP95–266–000]**

## ANR Pipeline Co.; Notice of Annual System Cashout Report

May 4, 1995.

Take notice that on May 1, 1995, ANR Pipeline Co. (ANR), tendered for filing its annual report of the net revenues attributable to the operation of its cashout program.

ANR states that the instant filing is ANR's first annual System Cashout Report since the implementation of Order No. 636, and covers the period of November 1, 1993 to December 31, 1994. The Net Cashout Activity for the period ending December 31, 1994 is a negative $451,147. As provided in Section 15.5(b) of ANR's General Terms and Conditions, of its FERC Gas Tariff, Second Revised Volume No. 1, this negative amount will be carried forward and applied to the next succeeding redetermination of Net Cashout Activity for the calendar year ended December 31, 1995.

ANR states that all of its Volume No. 1 FERC Gas Tariff customers and interested State Commissions have been mailed a copy of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such motions or protests should be filed on or before May 11, 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 the application are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–11434 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TM95–3–22–000]**

## CNG Transmission Corp., Notice of Compliance Filing

May 4, 1995.

Take notice that on May 1, 1995, CNG Transmission Corp. (CNG), in compliance with the Commission's March 31, 1995, Letter Order in the referenced proceeding, filed billing determinant and related information with the Commission.

CNG states that it has posted and served its filing in accordance with the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.24 and 385.211). All such motions or protests should be filed on or before May 11, 1995. Protests will be considered by the Commission in determining the appropriate action be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–11439 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. GT95–35–000]**

## Koch Gateway Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 1995.

Take notice that on May 2, 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, to become effective June 2, 1995:

First Revised Sheet No. 5300
First Revised Sheet No. 5301
First Revised Sheet No. 5302
First Revised Sheet No. 5303

Koch Gateway states that this filing is being submitted to update its Index of Purchasers with current information pursuant to Section 154.41 of the Commission's Regulations.

Koch Gateway states that the tariff sheets are being mailed to all of Koch Gateway's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.24 and 385.211). All such motions or protests should be filed on or before May 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–11431 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP95-269–000]**

## Paiute Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 1995.

Take notice that on May 2, 1995, Paiute Pipeline Company (Paiute), tendered for filing to be a part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective June 1, 1995:

First Revised Sheet No. 22
First Revised Sheet No. 51
First Revised Sheet No. 81
Third Revised Sheet No. 161

Paiute states that it is submitting the proposed tariff sheets in order to implement an element of a settlement agreement recently reached by the active parties with respect to Paiute's pending tariff filing in Docket No. RP95–55–000. According to Paiute, as part of that resolution, the parties have agreed to a realignment of the firm shippers' summer period monthly billing determinants over a period of several years, including the summer period for 1995. Paiute indicates, however, that because its customers' monthly billing determinants are treated as their contract entitlements, the revised billing determinants agreed to by the firm shippers for the 1995 summer period need to be filed and made effective immediately.

Paiute states, therefore, that it is submitting the proposed tariff sheets to reflect the agreed-upon billing determinants to be in effect as of June 1995, and to revise certain tariff language to correspond to the changes in billing determinants.

Paiute states that copies of the filing were served upon all of Paiute's customers and affected state regulatory commissions, and upon all parties on the service list in Docket No. RP95–55–000.

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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 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. 95–11437 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP95–268–000]**

## Tennessee Gas Pipeline Co.; Notice of Proposed Changes in FERC Tariff

May 4, 1995.

Take notice that on May 2, 1995, Tennessee Gas Pipeline Company (Tennessee), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, First Revised Sheet No. 327, First Revised Sheet No. 328, First Revised Sheet No. 334 and First Revised Sheet No. 335, with a proposed effective date of May 4, 1995.

Tennessee states that the tariff sheets are being filed in compliance with Order No. 577, issued by the Commission in Docket No. RM95–5–000, on April 4, 1995.

Tennessee states that copies of the filing has been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before May 11, 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 this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–11436 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. RP95–270–000]**

## Texas Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 1995.

Take notice on May 2, 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 sheets, with a proposed effective date of May 4, 1995:

First Revised Sheet No. 197
First Revised Sheet No. 198
First Revised Sheet No. 200
First Revised Sheet No. 201

Texas Gas states that the referenced tariff sheets have been revised to reflect changes to Sections 25.4 and 25.5 of its General Terms and Conditions regarding capacity releases as enacted by the Commission by Final Rule in Docket No. RM95–5–000 (Order No. 577).

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 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. 95–11438 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP95–267–000]**

## Transwestern Pipeline Company; Notice of Section 4 Filing

May 4, 1995.

Take notice that on May 2, 1995, Transwestern Pipeline Company (Transwestern), tendered for filing with the Federal Energy Regulatory Commission (Commission) in the above-referenced proceeding a Section 4 filing.

Transwestern states that it has previously made three abandonment filings (in Docket Nos. CP94–211, CP95–153 and CP95–70) for which Transwestern is submitting the Section 4 filing to notify the Commission of the proposed termination of gathering services prior to the effective date of such terminations. Transwestern states it is filing concurrently herewith a Stipulation and Agreement in Docket No. RP95–267 resolving, among other things, outstanding regulatory issues in the proceedings referenced in the Stipulation including Docket Nos. CP94–211, CP95–153 and CP95–70.

Transwestern also states that as a result of restructuring under Order No. 636, Transwestern has determined that the facilities listed in the abandonment filings are no longer necessary to Transwestern's primary function of providing transportation services, and, as an interstate pipeline subject to the Commission's full regulatory authority, Transwestern cannot compete effectively with the unregulated entities providing similar gathering services with similar facilities. These facilities, states Transwestern, could be operated more efficiently by a non-regulated entity whose primary business is to provide production and gathering services. Therefore, Transwestern states that it proposes to terminate services that are performed on those facilities.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 11, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–11435 Filed 5–9–95; 8:45 am]

BILLING CODE 6717–01–M

---

# ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5205–3]**

## Acid Rain Program: Notice of Draft Written Exemptions

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

**ACTION:** Notice of draft written exemptions.

**SUMMARY:** The U.S. Environmental Protection Agency is issuing draft written exemptions from Acid Rain permitting and monitoring requirements to 28 utility units at 12 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are also being issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register**.

**DATES:** Comments on the exemptions proposed by this action must be received on or before June 9, 1995.

**ADDRESSES:** Comments. Send comments to the following addresses:

For plants in Maine: Linda Murphy, Division Director, Air, Pesticides and Toxics Management Division, EPA Region 1, JFK Building, One Congress St., Boston, MA 02203.

For plants in New Jersey and New York: Conrad Simon, Division Director, Air and Waste Management Division, EPA Region 2, 290 Broadway, New York, NY 10007–1866.

For plants in Minnesota: David Kee, Director, Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

**FOR FURTHER INFORMATION CONTACT:** For plants in Maine, Ian Cohen, (617) 565–3029; for plants in New Jersey and New York, Gerry DeGaetano, (212) 637–4020, for plants in Minnesota, Allan Batka, (312) 353–7316.

**SUPPLEMENTARY INFORMATION:** If no significant, adverse comments are timely received, no further activity is contemplated in relation to these draft written exemptions and the exemptions issued as a direct final action in the notice of written exemptions published elsewhere in today's **Federal Register** will automatically become final on the date specified in that notice. If significant, adverse comments are timely received on any exemption, that exemption in the notice of written exemptions will be withdrawn and all public comment received on that exemption based on the relevant exemption in this notice of draft written exemptions. Because the Agency will not institute a second comment period on this notice of draft written exemptions, any parties interested in commenting should do so during this comment period.

For further information and a detailed description of the exemptions, see the information provided in the notice of written exemptions elsewhere in today's **Federal Register**.

Dated: May 1, 1995.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 95–11502 Filed 5–9–95; 8:45 am]

**BILLING CODE 6560–50–P**

---

**[FRL–5205–4]**

## Acid Rain Program: Notice of Written Exemptions

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

**ACTION:** Notice of written exemptions.

**SUMMARY:** The U.S. Environmental Protection Agency is issuing, as a direct final action, written exemptions from the Acid Rain Program permitting and monitoring requirements to 28 utility units at 12 plants in accordance with the Acid Rain Program regulations (40 CFR part 72). Because the Agency does not anticipate receiving adverse comments, the exemptions are being issued as a direct final action.

**DATES:** Each of the exemptions issued in this direct final action will be final on June 19, 1995 unless significant, adverse comments are received by June 9, 1995. If significant, adverse comments are timely received on any exemption in this direct final action, that exemption will be withdrawn through a notice in the **Federal Register**.

**ADDRESSES:** *Administrative Records.* The administrative record for the exemptions, except information protected as confidential, may be viewed during normal operating hours at the following locations:

For plants in Maine: EPA Region 1, JFK Building, One Congress St., Boston, MA 02203.

For plants in New Jersey and New York: EPA Region 2, 290 Broadway, New York, NY 10007–1866.

For plants in Minnesota: EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604.

*Comments.* Send comments to the following addresses:

For plants in Maine: Linda Murphy, Division Director, Air, Pesticides and Toxics Management Division, EPA Region 1, (address above).

For plants in New Jersey and New York: Conrad Simon, Division Director, Air and Waste Management Division, EPA Region 2, (address above).

For plants in Minnesota: David Kee, Director, Air and Radiation Division, EPA Region 5, (address above).

Submit comments in duplicate and identify the exemption to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption.

**FOR FURTHER INFORMATION CONTACT:** For plants in Maine, Ian Cohen, (617) 565–3029; for plants in New Jersey and New York, Gerry DeGaetano, (212) 637–4020, for plants in Minnesota, Allan Batka, (312) 353–7316.

**SUPPLEMENTARY INFORMATION:** All public comments received on any exemption in this direct final action on which significant, adverse comments are timely received will be addressed in a subsequent issuance or denial of exemption based on the relevant draft exemption in the notice of draft written exemptions that is published elsewhere in today's **Federal Register** and that is identical to this direct final action.

Under the Acid Rain Program regulations (40 CFR 72.7), utilities may petition EPA for an exemption from permitting and monitoring requirements for any new utility unit that serves one or more generators with total nameplate capacity of 25 MW or less and burns only fuels with a sulfur content of 0.05 percent or less by weight. On the earlier of the date a unit exempted under 40 CFR 72.7 burns any fuel with a sulfur content in excess of 0.05 percent by weight or 24 months prior to the date the exempted unit first serves one or more generators with total nameplate capacity in excess of 25 MW, the unit shall no longer be exempted under 40 CFR 72.7 and shall be subject to all permitting and monitoring requirements of the Acid Rain Program.

EPA is issuing written exemptions to the following new units, effective from January 1, 1995 through December 31, 1999:

Fergus Control Center unit 1 in Minnesota. The Designated Representative is Ward Uggerud.

Additionally under the Acid Rain Program regulations (40 CFR 72.8), utilities may petition EPA for an exemption from permitting requirements for units that are retired prior to the issuance of a Phase II Acid Rain permit. Units that are retired prior to the deadline for continuous emissions monitoring system (CEMS) certification may also petition for an exemption from monitoring requirements.

While the exempt retired units have been allocated allowances under 40 CFR part 73, units exempted under 40 CFR 72.8 must not emit any sulfur dioxide or nitrogen oxides on or after the date the units are exempted, and the units must not resume operation unless the designated representative submits an application for an Acid Rain permit and installs and certifies its monitors by the applicable deadlines.

EPA is issuing written exemptions from permitting requirements, effective from January 1, 1996, through December 31, 2000, and exemptions from monitoring requirements, effective from January 1, 1995, through December 31, 2000, unless otherwise noted below, to the following retired units:

Mason Steam units 3, 4, and 5 in Maine. The exemptions from permitting and monitoring requirements are effective from January 1, 1995, through December 31, 1999. The Designated Representative is Gerald Poulin.

Deepwater units 3, 5, and 9 in New Jersey. The Designated Representative is Henry Schwemm, Jr.

Linden unit 4 in New Jersey. The Designated Representative is Kenneth Gurbisz.

Gilbert units 1 and 2 in New Jersey. The exemption from monitoring requirements is effective November 1, 1995, through December 31, 2000. The Designated Representative is Ronald Lacey.

Sayreville units 2, 3, 5, and 6 in New Jersey. The Designated Representative is Ronald Lacey.

Sewaren unit 5 in New Jersey. The Designated Representative is George Biernesser.

59th Street unit 110 in New York. The Designated Representative is Raymond Kimmel, Jr.

Astoria units 10 and 20 in New York. The Designated Representative is Raymond Kimmel, Jr.

Rochester 3 units 1, 2, 3, 4, 7, and 8 in New York. The Designated Representative is David Irish.

Oswego units 1 and 2 in New York. The Designated Representative is Clement Nadeau.

Waterside units 41 and 42 in in New York. The Designated Representative is Raymond Kimmel, Jr.

Dated: May 1, 1995.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 95–11503 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–P

---

**[FRL–5205–1]**

## Correction to Previous Notice of Contractor Access to Confidential Business Information Under the Clean Air Act

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

**ACTION:** Correction.

**SUMMARY:** On April 17, 1995, the EPA published a **Federal Register** Notice announcing contractor access to confidential business information (60 FR 19250). This notice incorrectly listed contract numbers and contract expiration dates. The correct information is as follows.

The EPA has authorized the following subcontractors for access to information that has been, or will be, submitted to EPA under section 114 of the Clean Air Act (CAA) as amended. (1) EC/R, Inc., 3721–D University Drive, Durham, NC 27707, contract number 68D10118; (2) Alpha Gamma Technologies, Inc., 900 Ridgefield Drive, Suite 350, Raleigh, NC 27609, contract number 68D10117; (3) Energy and Environmental Research Corporation (EER), 3710 University Drive, Suite 160, contract 68D10117. The prime contractor for contract 68D10117 is Radian Corporation, PO Box 13000, RTP, NC 27709 and the prime contractor for contract 68D10118 is Research Triangle Institute, PO Box 12194, RTP, NC 27709. Both of these contracts expire on August 1, 1996, thus CBI access under these contracts expires at that time as well.

**DATES:** Access to confidential data submitted to EPA will occur no sooner than ten days after issuance of this notice.

**FOR FURTHER INFORMATION CONTACT:** Doris Maxwell, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5312.

Dated: May 1, 1995.

**Richard D. Wilson,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 95–11506 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–P

---

**[OPP–50806A; FRL–4952–8]**

## Issuance of an Experimental Use Permit for a Transgenic Plant Pesticide

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

**ACTION:** Notice.

**SUMMARY:** On April 13, 1995, EPA issued EPA Experimental Use Permit (EUP) to Calgene Inc. to conduct field testing of a transgenic plant pesticide. EPA has determined that this permit may be of regional and national significance. The Agency evaluated the data submitted by Calgene and, based on these data and other available data, could foresee no significant risk to humans or to nontarget organisms from this group of field tests as proposed by Calgene. In accordance with 40 CFR 172.11(a), the Agency is soliciting public comments.

**DATES:** Written comments must be received on or before June 9, 1995.

**ADDRESSES:** Written comments, in triplicate should bear the docket control number OPP–50806A and be 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 comments to Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Crystal City, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–50806A'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit III of this document.

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'' (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 to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Linda A. Hollis, Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number: CS1 5th floor, 2800 Crystal Drive, Crystal City, VA (703–308–8733).

**SUPPLEMENTARY INFORMATION:**

### I. EUP Program

The EUP was issued to Calgene Inc., 1920 5th St., Davis, CA 95616. The permit was assigned EUP number 65247–EUP–1 and issued for 1 year, beginning April 13, 1995 and ending April 15, 1996. Calgene will be testing a transgenic insect resistant cotton plant which expresses a *Bacillus thuringiensis* subsp. *kurstaki* (B.t.k.) cryIA(c) segment within the plant cells. *Bacillus thuringiensis* subsp. *kurstaki* protein will be present at no more than .001 percent of the total weight of the cottonseed. The cryIA(c) gene of *Bacillus thuringiensis* is transferred to cotton via the Ti plasmid of *Agrobacterium tumefaciens*, a vector system which has been used to stably transform many plant pesticides. All transgenic plants to be used in this field trial are upland cotton *Gossypium hirsutum*.

A total of 2,460 pounds of transgenic cottonseed will be planted on 2.0 to 27.0 acre sites for a total of 67 acres transgenic planting. Calgene's test sites are located in the following States: Alabama, Arizona, Arkansas, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee and Texas. Upon completion of data collection and/or harvest, all cotton plants in the transgenic trial will be destroyed by incorporation into the soil. Seed harvested from the plant breeding nursery and strains test may be retained for use in further research and

development and used as future planting seed. No seed may be used for food or feed, and all other plant material must be destroyed.

Calgene's EUP program will include the following three experiments designed to evaluate the performance of the expressed proteins against lepidopteran pests: Strains Tests; Breeding Nurseries, and Research Tests.

EPA's scientific staff has evaluated the potential for adverse effects on nontarget species and the environment as a result of this EUP. The Agency does not foresee any human health risks or effects resulting from the proposed field tests because there will be minimal human exposure.

Further, EPA foresees no significant environmental impact resulting from the testing under this EUP because it is of limited acreage and duration and because minimal offsite movement (approximately three percent or less) of expressed proteins is expected to occur. Yet a potential exists for offspring of commercially grown cotton to become feral (wild), and these wild offspring might have a selective advantage due to the addition of these insect resistance traits in their genetic make-up; however, feral cotton has many additional constraints, such as hardiness, habit, and reproductive limits, which have prevented it from becoming aggressive or weedy despite cotton's long cultivation in the continental United States. Hence, the expression of B.t.k. protein or NPT II marker enzyme genes is expected to neither create nor aggravate any weedy or aggressive characteristics in cotton grown for this EUP.

Because the field tests will be conducted in areas of the 11 States where no known populations of endangered lepidopteran species exist, no risk is expected as a result of the proposed field tests. In addition, because of the low exposure due to the limited acreage and duration of the EUP, EPA feels that there will not be a situation warranting a formal review under the Endangered Species Act for any endangered mammals, birds, invertebrates, plants or aquatic species.

## II. Labeling

The labeling states the following:

This package contains insect resistant cottonseed expressing a *Bacillus thuringiensis* subsp. *kurstaki* (B.t.k.) protein effective in controlling certain lepidopteran insects. For use only at an application site of a cooperator and in accordance with the terms and conditions of the Experimental Use Permit. This labeling must be in the possession of the user at the time of planting. Not for sale to any person other than a participant or cooperator of the EPA approved Experimental Use Permit Program. The contents may only be used according to the approved EUP program. Cooperators must have at least one copy of each applicable protocol prior to initiating any research with the contents.

## III. Public Comments

A record has been established for this document under docket number ''OPP–50806A'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this document, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

The Agency announced receipt of Calgene's application in the **Federal Register** of March 1, 1995 (60 FR 11904). A 30–day public comment period was provided. No comments were received.

Dated: April 28, 1995.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 95–11500 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–F

**[PP 2G4048 and 2G4049/T674; FRL 4948–9]**

## Miles Inc.; Renewal of Temporary Tolerances

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

**ACTION:** Notice.

**SUMMARY:** EPA has renewed temporary tolerances for residues of the insecticide *O*-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl)phosphorothioate and for residues of the insecticide cyfluthrin in or on certain raw agricultural commodities.

**DATES:** These temporary tolerances expire December 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6600; e-mail: forrest.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of June 8, 1994 (59 FR 29608), announcing that temporary tolerances had been established for residues of the insecticide *O*-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl)phosphorothioate in or on the raw agricultural commodities corn, sweet (K + CWHR); corn, grain, field and pop; corn, forage and fodder, field, pop, and sweet at 0.01 part per million (ppm), and for residues of the insecticide cyfluthrin Cyano-(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in or on these raw agricultural commodities at 0.01 ppm. These tolerances are being renewed in response to pesticide petitions (PP) 2G4048 and 2G4049, submitted by Miles Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120–0013.

The company has requested a 1–year renewal of the temporary tolerances for residues of the insecticides to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 3125–EUP–202, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that renewal of

the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Miles Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 31, 1995. Residues not in excess of these amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

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).

**Authority:** 21 U.S.C. 346a(j).

### List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 28, 1995.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–11148 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–F

---

**[OPP–66212; FRL 4949–1]**

## 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 August 8, 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, (703) 305–5761.

**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 20 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 |
|---|---|---|
| 000264–00313 | Sevin Brand 50% Dust Base Carbaryl Insecticide | 1-Naphthyl-*N*-methylcarbamate |
| 000352–00493 | Vendex 4L Miticide | Hexakis (2-methyl-2-phenylpropyl) distannoxane |
| 000352 NC–84–0002 | Dupont Lexone DF Weed Killer | 1,2,4-Triazin-5(4*H*)-one, 4-amino-6-(1,1-dimethylethyl)-3-(methylthio)- |
| 000352 OR–91–0001 | Vendex 4L Miticide | Hexakis (2-methyl-2-phenylpropyl) distannoxane |
| 000352 WA–88–0010 | Du Pont Vendex 4L Miticide | Hexakis (2-methyl-2-phenylpropyl) distannoxane |
| 000352 WA–91–0001 | Vendex 4L Miticide | Hexakis (2-methyl-2-phenylpropyl) distannoxane |
| 001448–00105 | Busan 11-M3 | Barium metaborate |
| 001448–00106 | Busan 11-M4 | Barium metaborate |
| 001769–00098 | Swat Insect Repellent | Dipropyl isocinchomeronate<br>*N*-Octyl bicycloheptene dicarboximide<br>*N,N*-Diethyl-meta-toluamide and other isomers |
| 002230–00043 | Pan-A-Sol | Ethanol<br>Hydrogen chloride<br>Alkyl* dimethyl benzyl ammonium chloride *(50%$C_{14}$,40%$C_{12}$, 10%$C_{16}$) |
| 004822–00079 | Neopynamin | (1-Cyclohexene-1,2-dicarboximido) methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop |
| 007689–00014 | Wardley's Liquid Allclear | 2-Chloro-4,6-bis(ethylamino)-*s*-triazine |
| 007689–00016 | Allclear II Algicide for Outdoor Fishpools | 2-Chloro-4,6-bis(ethylamino)-*s*-triazine |
| 007689–00017 | Allclear II Aquarium Algicide | 2-Chloro-4,6-bis(ethylamino)-*s*-triazine |

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

| Registration No. | Product name | Chemical name |
|---|---|---|
| 010190–00002 | Salubrite ''Chlorinated Detergent'' | Sodium dichloro-*s*-triazinetrione |
| 049271–00003 | MB-506 | Potassium *N*-methyldithiocarbamate<br>Disodium cyanodithioimidocarbonate |
| 051661–00009 | WC 600 | Potassium *N*-methyldithiocarbamate<br>Disodium cyanodithioimidocarbonate |
| 060249 AZ–89–0001 | Prefar 4E | *S*-(*O,O*-Diisopropyl phosphorodithioate) ester of *N*-(2-mercaptoethyl)benzenesulfonamide |
| 062719 ID–82–0018 | Dow Lorsban 4E Insecticide | *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate |
| 064864–00009 | Master Cax A Heavy Duty Cleaner-Sanitizer-Deodorizer | Sodium dichloro-*s*-triazinetrione |

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 |
|---|---|
| 000264 | Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709. |
| 000352 | E. I. Du Pont De Nemours & Co, Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880. |
| 001448 | Buckman Labs Inc., 1256 Mclean Blvd, Memphis, TN 38108. |
| 001769 | NCH Corp., 2727 Chemsearch Blvd., Irving, TX 75062. |
| 002230 | Warsaw Chemical Co. Inc., Argonne Rd, Box 858, Warsaw, IN 46581. |
| 004822 | S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403. |
| 007689 | Wardley Products Co. Inc., One Aquarium Drive, Secaucus, NJ 07094. |
| 010190 | Penetone Corp., 74 Hudson Ave, Tenafly, NJ 07670. |
| 049271 | Hydro Chemicals, Inc., Box 23566, Chattanooga, TN 37422. |
| 051661 | WC Chemical Engineering, Box 5155, Modesto, CA 95352. |
| 060249 | Ramsey Farms Inc., 15000 E. County 3rd Street, Yuma, AZ 85365. |
| 062719 | DowElanco, 9330 Zionsville Rd 308/3E, Indianapolis, IN 46268. |
| 064864 | Pace International, L.P., Box 558, Kirkland, WA 98083. |

## 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 August 8, 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: April 27, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 95–11383 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–F

---

**[OPP–190004; FRL–4926–3]**

## State Pesticide Residue Removal Compliance Programs

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

**ACTION:** Notice of Interim Determination of Adequacy of Certain State and Territorial Programs.

**SUMMARY:** Section 19(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) states that after December 24, 1993, a State may not exercise primary enforcement responsibility under section 26, or certify an applicator under section 11, unless the Administrator determines that the State is carrying out an adequate program to ensure compliance with section 19(f)(1). The Agency has not promulgated regulations under section 19(f)(1). To avoid having the provisions of section 19(f)(2) adversely impact the States and EPA, the Agency published a policy in the **Federal Register** on August 18, 1993, which sets forth a process whereby the Agency will make an interim determination of adequacy for those States (and territories) with primary enforcement responsibility and/or certification programs. This determination is based on an initial commitment by a State to conduct a number of activities which will position the State to have an adequate program in place by the time compliance with the regulations promulgated under section 19(f)(1) is required.

This notice is to announce that the Government of the Virgin Islands has met the criteria of the August 18, 1993 policy by submitting a commitment to conduct the activities set forth in the policy and therefore has been determined by EPA to have an adequate pesticide residue removal compliance program under section 19(f)(1) and to be taking the necessary steps ensure compliance with the new requirements after EPA's promulgation of the final rule.

**ADDRESSES:** Any person wishing to review the State submissions may do so, in person, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the following address: Public Docket, Room 1132, CM–2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** Phyllis Flaherty, Agriculture and Ecosystems Division, Office of Compliance (2225A), 401 M St., SW., Washington DC 20460, telephone (202) 564–2355, facsimile (202) 564–0028.

**SUPPLEMENTARY INFORMATION:** The Government of the Virgin Islands has submitted a commitment to conduct the activities outlined in the August 18, 1993 Policy Statement on Interim Determination of Adequacy of State Pesticide Residue Removal Compliance Programs.

This Government has met two criteria: (1) there is a current program for ensuring compliance with existing residue removal requirements, and (2) it has committed to the activities set out in the August 18, 1993 Policy Statement to be in a position to have a compliance program in place to enforce the section 19(f)(1) regulations. Based on the commitment submitted, I have determined that the Government of the Virgin Islands will be taking steps necessary to have an adequate program for ensuring compliance with the regulations under section 19(f)(1) upon the compliance date of those regulations. This determination of adequacy is temporary and will expire 2 years after promulgation of a final rule issued under section 19(f)(1). Thereafter, the Government of the Virgin Islands must have a program to ensure compliance with the section 19(f) regulations.

Dated: April 20, 1995.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 95–11382 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–F

---

**[PP 6G3306/T675; FRL 4951–6]**

## Triclopyr; Renewal of Temporary Tolerances

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

**ACTION:** Notice.

**SUMMARY:** EPA has renewed temporary tolerances for the combined residues of the herbicide triclopyr and its metabolites in or on certain raw agricultural commodities.

**DATES:** These temporary tolerances expire March 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6800; e-mail: taylor.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of August 15, 1991 (56 FR 40615), stating that temporary tolerances had been renewed for the combined residues of the herbicide triclopyr (3,5,6-trichloro-2-pyridinyl)oxyacetic acid and its metabolites 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine in or on the raw agricultural commodities fish and shellfish at 0.2 part per million (ppm). An allowable residue level of 0.5 ppm in potable water is also being renewed. These tolerances are renewed in response to pesticide petition (PP) 6G3306, submitted by DowElanco, 9330 Zionsville Rd., Indianapolis, IN 46268–1054.

The company has requested a 1-year renewal of the temporary tolerances to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 62719–EUP–1, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136). The scientific data reported and other relevant material were evaluated, and it was determined that renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. DowElanco must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 30, 1997. Residues not in excess of these amounts remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in

accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12866.

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

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

**Authority:** 21 U.S.C. 346a(j).

Dated: April 28, 1995.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–11147 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–F

---

**[Docket No. 95F–FRL–5205–5]**

## Interim Revised EPA Supplemental Environmental Projects Policy Issued

**AGENCY:** Office of Enforcement and Compliance Assurance, EPA.

**ACTION:** Notice.

**SUMMARY:** The Office of Enforcement and Compliance Assurance (EPA) is issuing the Interim Revised EPA Supplemental Environmental Projects Policy. This Policy supersedes the February 12, 1991 Policy on the Use of Supplemental Environmental Projects in EPA Settlements. This Policy responds to numerous complaints that the 1991 Policy was too cumbersome, rigid and difficult to understand and apply. This Policy is being issued to provide greater flexibility to EPA in exercising its enforcement discretion to establish appropriate settlement penalties and to the regulated community in proposing supplemental environmental projects (SEPs) designed to secure significant environmental or public health protection and improvements. EPA intends to implement this Policy on an interim basis effective May 8, 1995.

**DATES:** Comments must be received on or before August 6, 1995.

**ADDRESSES:** Comments may be mailed to: SEP Policy, Multimedia Enforcement Division, Office of Regulatory Enforcement, Mail Code 2248–A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** David A. Hindin, 202–564–6004, Gerard C. Kraus, 202–564–6047 or Peter W. Moore, 202–564–6014, Office of Regulatory Enforcement, Mail Code 2248–A, United States Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460.

**SUPPLEMENTARY INFORMATION:** This interim final version of the EPA Supplemental Environmental Projects Policy expands and clarifies the 1991 Policy on the Use of Supplemental Environmental Projects in EPA Settlements. The primary purpose of this Policy is to obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy. The revised Policy, issued today, establishes a framework for determining whether a proposed project can be considered in establishing an appropriate settlement penalty. In addition, this Policy sets out clear legal guidelines, well-defined categories of acceptable projects and simple easy to apply rules for calculating and applying the cost of a SEP in determining an appropriate settlement penalty.

Dated: May 1, 1995

**Steven A. Herman,**

*Assistant Administrator, Office of Enforcement and Compliance Assurance, United States Environmental Protection Agency.*

### A. Introduction

#### *1. Background*

In settlements of environmental enforcement cases, the U.S. Environmental Protection Agency (EPA) will require the alleged violators to achieve and maintain compliance with Federal environmental laws and regulations and to pay a civil penalty. To further EPA's goals to protect and enhance public health and the environment, in certain instances environmentally beneficial projects, or Supplemental Environmental Projects (SEPs), may be included in the settlement. This Policy sets forth the types of projects that are permissible as SEPs, the penalty mitigation appropriate for a particular SEP, and the terms and conditions under which they may become part of a settlement. The primary purpose of this Policy is to encourage and obtain environmental and public health protection and improvements that may not otherwise have occurred without the settlement incentives provided by this Policy.

In settling enforcement actions, EPA requires alleged violators to promptly cease the violations and, to the extent feasible, remediate any harm caused by the violations. EPA also seeks substantial monetary penalties in order to deter noncompliance. Without penalties, companies would have an incentive to delay compliance until they are caught and ordered to comply. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a national level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors who made the necessary expenditures to comply on time. Penalties also encourage companies to adopt pollution prevention and recycling techniques, so that they minimize their pollutant discharges and reduce their potential liabilities.

Statutes administered by EPA generally contain penalty assessment criteria that a court or administrative law judge must consider in determining an appropriate penalty at trial or a hearing. In the settlement context, EPA generally follows these criteria in exercising its discretion to establish an appropriate settlement penalty. In establishing an appropriate penalty, EPA considers such factors as the economic benefit associated with the violations, the gravity or seriousness of the violations, and prior history of violations. Evidence of a violator's commitment and ability to perform a SEP is also a relevant factor for EPA to consider in establishing an appropriate settlement penalty. All else being equal, the final settlement penalty will be lower for a violator who agrees to perform an acceptable SEP compared to the violator who does not agree to perform a SEP.

The Agency encourages the use of SEPs. While penalties play an important role in environmental protection by deterring violations and creating a level playing field, SEPs can play an additional role in securing significant environmental or public health

protection and improvements.[1] SEPs may not be appropriate in settlement of all cases, but they are an important part of EPA's enforcement program. SEPs may be particularly appropriate to further the objectives in the statutes EPA administers and to achieve other policy goals, including promoting pollution prevention and environmental justice.

*2. Pollution Prevention and Environmental Justice*

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, November 5, 1990) identifies an environmental management hierarchy in which pollution ''should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other release into the environment should be employed only as a last resort * * *'' (42 U.S.C. 13103). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created.

Selection and evaluation of proposed SEPs should be conducted in accordance with this hierarchy of environmental management, i.e., SEPs involving pollution prevention techniques are preferred over other types of reduction or control strategies, and this can be reflected in the degree of consideration accorded to a defendant/respondent before calculation of the final monetary penalty.

Further, there is an acknowledged concern, expressed in Executive Order 12898 on environmental justice, that certain segments of the nation's population are disproportionately burdened by pollutant exposure. Emphasizing SEPs in communities where environmental justice issues are present helps ensure that persons who spend significant portions of their time in areas, or depend on food and water sources located near, where the violations occur would be protected. Because environmental justice is not a specific technique or process but an overarching goal, it is not listed as a category of SEP; but EPA encourages SEPs in communities where environmental justice may be an issue.

*3. Using This Policy*

In evaluating a proposed project to determine if it qualifies as a SEP and then determining how much penalty mitigation is appropriate, Agency enforcement and compliance personnel should use the following five-step process:

(1) Ensure that the project meets the basic definition of a SEP. (Section B)

(2) Ensure that all legal guidelines, including nexus, are satisfied. (Section C)

(3) Ensure that the project fits within one (or more) of the designated categories of SEPs. (Section D)

(4) Calculate the net-present after-tax cost of the project and then determine the appropriate amount of penalty mitigation. (Section E)

(5) Ensure that the project satisfies all of the implementation and other criteria. (Sections F, G, H and I)

*4. Applicability*

This Policy revises and hereby supersedes the February 12, 1991 Policy on the Use of Supplemental Environmental Projects in EPA Settlements. This Policy applies to settlements of all civil judicial and administrative actions filed after the effective date of this Policy, and to all pending cases in which the government has not reached agreement in principle with the alleged violator on the specific terms of a SEP.

This Policy applies to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations that EPA administers. It also may be used by EPA and the Department of Justice in reviewing proposed SEPs in settlement of citizen suits. This Policy also applies to federal agencies that are liable for the payment of civil penalties. This Policy does not apply to settlements of claims for stipulated penalties for violations of consent decrees or other settlement agreement requirements.[2]

This is a *settlement* Policy and thus is not intended for use by EPA, defendants, respondents, courts or administrative law judges at a hearing or in a trial. Further, whether the Agency decides to accept a proposed SEP as part of a settlement is purely within EPA's discretion. Even though a project appears to satisfy all of the provisions of this Policy, EPA may decide, for one or more reasons, that a SEP is not appropriate (e.g., the cost of reviewing a SEP proposal is excessive, the oversight costs of the SEP may be too high, or the defendant/respondent may not have the ability or reliability to complete the proposed SEP).

This Policy establishes a framework for EPA to use in exercising its enforcement discretion in determining appropriate settlements. In some cases, application of this Policy may not be appropriate, in whole or part. In such cases, the litigation team may, with the advance approval of Headquarters, use an alternative or modified approach.

**B. Definition and Key Characteristics of a SEP**

Supplemental environmental projects are defined as environmentally beneficial projects which a defendant/respondent agrees to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform. The three bolded key parts of this definition are elaborated below.

''Environmentally beneficial'' means a SEP must improve, protect, or reduce risks to public health, or the environment at large. While in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.

''In settlement of an enforcement action'' means: (1) EPA has the opportunity to help shape the scope of the project before it is implemented; and (2) the project is not commenced until after the Agency has identified a violation (e.g., issued a notice of violation, administrative order, or complaint).[3]

''Not otherwise legally required to perform means'' the SEP is not required by any federal, state or local law or regulation. Further, SEPs cannot include actions which the defendant/respondent may be required to perform: as injunctive relief in the instant case; as part of a settlement or order in another legal action; or by state or local requirements. SEPs may include activities which the defendant/respondent will become legally obligated to undertake two or more years in the future. Such ''accelerated compliance'' projects are not allowable, however, if the regulation or statute provides a benefit (e.g., a higher

[1] Depending on circumstances and cost, SEPs also may have a deterrent impact.

[2] The Agency is evaluating whether SEPs should be used, and if so, how, in evaluating claims for stipulated penalties.

[3] Since the primary purpose of this Policy is to obtain environmental or public health benefits that may not have occurred ''but for'' the settlement, projects which have been started before the Agency has identified a violation are not eligible as SEPs. Projects which have been committed to or started before the identification of a violation may mitigate the penalty in other ways. Depending on the specifics, if a company had initiated environmentally beneficial projects before the enforcement process commenced, the initial penalty calculation could be lower due to the absence of recalcitrance, no history of other violations, good faith efforts, less severity of the violations, or a shorter duration of the violations.

emission limit) to the defendant/respondent for early compliance.

Also, the performance of a SEP reduces neither the stringency nor timeliness requirements of Federal environmental statutes and regulations. Of course, performance of a SEP does not alter the defendant/respondent's obligation to remedy a violation expeditiously and return to compliance.

**C. Legal Guidelines**

EPA has broad discretion to settle cases, including the discretion to include SEPs as an appropriate part of the settlement. The legal evaluation of whether a proposed SEP is within EPA's authority and consistent with all statutory and Constitutional requirements may be a complex task. Accordingly, this Policy uses five legal guidelines to ensure that our SEPs are within the Agency's and a federal court's authority, and do not run afoul of any Constitutional or statutory requirements.[4]

1. All projects must have adequate nexus. Nexus is the relationship between the violation and the proposed project. This relationship exists only if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future. SEPs are likely to have an adequate nexus if the primary impact of the project is at the site where the alleged violation occurred or at a different site in the same ecosystem or within the immediate geographic[5] area. Such SEPs may have sufficient nexus even if the SEP addresses a different pollutant in a different medium. In limited cases, nexus may exist even though a project will involve activities outside of the United States.[6]

2. A project must advance at least one of the declared objectives of the environmental statutes that are the basis of the enforcement action. Further, a project cannot be inconsistent with any provision of the underlying statutes.

3. EPA or any other federal agency may not play any role in managing or controlling funds that may be set aside or escrowed for performance of a SEP. Nor may EPA retain authority to manage or administer the SEP. EPA may, of course, provide oversight to ensure that a project is implemented pursuant to the provisions of the settlement and have legal recourse if the SEP is not adequately performed.

4. The type and scope of each project are determined in the signed settlement agreement. This means the ''what, where and when'' of a project are determined by the settlement agreement. Settlements in which the defendant/respondent agrees to spend a certain sum of money on a project(s) to be determined later (after EPA or the Department of Justice signs the settlement agreement) are generally not allowed.

5. A project may not be something that EPA itself is required by its statutes to do. And a project may not provide EPA with additional resources to perform an activity for which Congress has specifically appropriated funds. In addition, a SEP should not appear to be an expansion of an existing EPA program. For example, if EPA has developed a brochure to help a segment of the regulated community comply with environmental requirements, a SEP may not directly, or indirectly, provide additional resources to revise, copy or distribute the brochure.

**D. Categories of Supplemental Environmental Projects**

EPA has identified seven categories of projects which may qualify as SEPs. In order for a proposed project to be accepted as a SEP, it must satisfy the requirements of at least one category plus all the other requirements established in this Policy.

*1. Public Health*

A public health project provides diagnostic, preventative and/or remedial components of human health care which is related to the actual or potential damage to human health caused by the violation. This may include epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/ tissue samples, medical treatment and rehabilitation therapy.

Public health SEPs are acceptable only where the primary benefit of the project is the population that was harmed or put at risk by the violations.

*2. Pollution Prevention*

A pollution prevention project is one which reduces the generation of pollution through ''source reduction,'' i.e., any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment, prior to recycling, treatment or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

Source reduction may include equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project which protects natural resources through conservation or increased efficiency in the use of energy, water or other materials. ''In-process recycling,'' wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water or other materials. This is consistent with the Pollution Prevention Act of 1990 and the Administrator's ''Pollution Prevention Policy Statement: New Directions for Environmental Protection,'' dated June 15, 1993.

*3. Pollution Reduction*

If the pollutant or waste stream already has been generated or released, a pollution reduction approach—which employs recycling, treatment, containment or disposal techniques—may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means which does not qualify as ''pollution prevention.'' This may include the installation of more effective end-of-process control or treatment technology. This also includes ''out-of-process recycling,'' wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site, reducing the need for treatment,

[4] These legal guidelines are based on federal law as it applies to EPA; States may have more or less flexibility in the use of SEPs depending on their laws.

[5] The immediate geographic area will generally be the area within a 50 mile radius of the site on which the violations occurred.

[6] All projects which would include activities outside the U.S. must be approved in advance by Headquarters and/or the Department of Justice. See section I.

disposal, or consumption of energy or natural resources.

*4. Environmental Restoration and Protection*

An environmental restoration and protection project is one which goes beyond repairing the damage caused by the violation to enhance the condition of the ecosystem or immediate geographic area adversely affected.[7] These projects may be used to restore or protect natural environments (such as ecosystems) and man-made environments, such as facilities and buildings. Also included is any project which protects the ecosystem from actual or potential damage resulting from the violation or improves the overall condition of the ecosystem. Examples of such projects include: Reductions in discharges of pollutants which are not the subject of the violation to an affected air basin or watershed; restoration of a wetland along the same avian flyway in which the facility is located; or purchase and management of a watershed area by the defendant/respondent to protect a drinking water supply where the violation, e.g., a reporting violation, did not directly damage the watershed but potentially could lead to damage due to unreported discharges. This category also includes projects which provide for the protection of endangered species (e.g., developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation).

With regards to man-made environments, such projects may involve the remediation of facilities and buildings, provided such activities are not otherwise legally required. This includes the removal/mitigation of contaminated materials, such as soils, asbestos and leaded paint, which are a continuing source of releases and/or threat to individuals.

*5. Assessments and Audits*

Assessments and audits, if they are not otherwise available as injunctive relief, are potential SEPs under this category. There are four types of projects in this category:

a. Pollution prevention assessments; b. site assessments; c. environmental management system audits; and d. compliance audits.

a. *Pollution prevention assessments* are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. To be eligible for SEPs, such assessments must be conducted using a recognized pollution prevention assessment or waste minimization procedure to reduce the likelihood of future violations.

b. *Site assessments* are investigations of the condition of the environment at a site or of the environment impacted by a site, and/or investigations of threats to human health or the environment relating to a site. These include but are not limited to: Investigations of levels and/or sources of contamination in any environmental media at a site; investigations of discharges or emissions of pollutants at a site, whether from active operations or through passive transport mechanisms; ecological surveys relating to a site; natural resource damage assessments; and risk assessments. To be eligible for SEPs, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.

c. An *environmental management system audit* is an independent evaluation of a party's environmental policies, practices and controls. Such evaluation may encompass the need for: (1) A formal corporate environmental compliance policy, and procedures for implementation of that policy; (2) educational and training programs for employees; (3) equipment purchase, operation and maintenance programs; (4) environmental compliance officer programs; (5) budgeting and planning systems for environmental compliance; (6) monitoring, record keeping and reporting systems; (7) in-plant and community emergency plans; (8) internal communications and control systems; and (9) hazard identification, risk assessment.

d. *An environmental compliance audit* is an independent evaluation of a defendant/respondent's compliance status with environmental requirements. Credit is only given for the costs associated with conducting the audit. While the SEP should require all violations discovered by the audit to be promptly corrected, no credit is given for remedying the violation since persons are required to achieve and maintain compliance with environmental requirements. In general, compliance audits are acceptable as SEPs only when the defendant/respondent is a small business.[8,9]

These two types of assessments and environmental management system audits are allowable as SEPs without an implementation commitment by the defendant/respondent. Implementation is not required because drafting implementation requirements before the results of the study are known is difficult. Further, for pollution prevention assessments and environmental management systems audits, many of the implementation recommendations from these studies may constitute activities that are in the defendant/respondent's own economic interest.

These assessments and audits are acceptable where the primary impact of the project is at the same facility, at another facility owned by the violator, or at a different facility in the same ecosystem or within the immediate geographic area (e.g., a publicly owned wastewater treatment works and its users). These assessments and audits are only acceptable as SEPs when the defendant/respondent agrees to provide EPA with a copy.

*6. Environmental Compliance Promotion*

An environmental compliance promotion project provides training or technical support to other members of the regulated community to: (1) Identify, achieve and maintain compliance with applicable statutory and regulatory requirements; (2) avoid committing a violation with respect to such statutory and regulatory requirements; or (3) go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. For these types of projects, the defendant/respondent may lack the experience, knowledge or ability to implement the project itself, and, if so, the defendant/respondent should be required to contract with an appropriate expert to develop and implement the compliance promotion project. Acceptable projects may include, for example, producing or sponsoring a seminar directly related to correcting widespread or prevalent violations

[7] If EPA lacks authority to require repair, then repair itself may constitute a SEP.

[8] For purposes of this Policy, a small business is owned by a person or another entity that employs 100 or fewer individuals. Small businesses could be individuals, privately held corporations, farmers, landowners, partnerships and others.

[9] Since most large companies routinely conduct compliance audits, to mitigate penalties for such audits would reward violators for performing an activity that most companies already do. In contrast, these audits are not commonly done by small businesses, perhaps because such audits may be too expensive.

within the defendant/ respondent's economic sector.

Environmental compliance promotion SEPs are acceptable only where the primary impact of the project is focused on the same regulatory program requirements which were violated and where EPA has reason to believe that compliance in the sector would be significantly advanced by the proposed project. For example, if the alleged violations involved Clean Water Act pretreatment violations, the compliance promotion SEP must be directed at ensuring compliance with pretreatment requirements.

*7. Emergency Planning and Preparedness*

An emergency planning and preparedness project provides assistance—such as computers and software, communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training—to a responsible state or local emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel and to better respond to chemical spills.

EPCRA requires regulated sources to provide information on chemical production, storage and use to State Emergency Response Commissions (SERCs), Local Emergency Planning Committees (LEPCs) and Local Fire Departments (LFDs). This enables states and local communities to plan for and respond effectively to chemical accidents and inform potentially affected citizens of the risks posed by chemicals present in their communities, thereby enabling them to protect the environment or ecosystems which could be damaged by an accident. Failure to comply with EPCRA impairs the ability of states and local communities to meet their obligations and places emergency response personnel, the public and the environment at risk from a chemical release.

Emergency planning and preparedness SEPs are acceptable where the primary impact of the project is within the same emergency planning district or state affected by the violations. Further, this type of SEP is allowable only when the SEP involves non-cash assistance and there are violations of EPCRA or reporting violations under CERCLA Section 103 alleged in the complaint.

*8. Projects Which Are Not Acceptable as SEPs*

Except for projects which meet the specific requirements of one of the categories enumerated in § D. above, the following are examples of the types of projects that are not allowable as SEPs:

a. General educational or public environmental awareness projects, e.g., sponsoring public seminars, conducting tours of environmental controls at a facility, promoting recycling in a community;

b. Contribution to environmental research at a college or university;

c. Conducting a project, which, though beneficial to a community, is unrelated to environmental protection, e.g., making a contribution to charity, or donating playground equipment;

d. Studies or assessments without a commitment to implement the results (except as provided for in Section D.5 above);

e. Projects which are being funded by low-interest federal loans, federal contracts, or federal grants.

**E. Calculation of the Final Penalty**

As a general rule, the costs to be incurred by a violator in performing a SEP may be considered in determining an appropriate settlement amount. Calculating the final penalty in a settlement which includes a SEP is a three-step process. First, the Agency's penalty policies are used as applicable to calculate all of the other parts of the settlement penalty (including economic benefit and gravity components). Second, calculate the net-present after-tax cost of the SEP. Third, evaluate the benefits of the SEP, based on specific factors, to determine what percentage of the net-present after-tax cost will be considered in determining an appropriate final settlement penalty.

*1. Penalty*

Penalties are an important part of any settlement. A substantial penalty is generally necessary for legal and policy reasons. Without penalties there would be no deterrence as regulated entities would have little incentive to comply. Penalties are necessary as a matter of fairness to those companies that make the necessary expenditures to comply on time: violators should not be allowed to obtain an economic advantage over their competitors who complied. Except in extraordinary circumstances, if a settlement includes a SEP, the penalty should recover, at a minimum, the economic benefit of noncompliance plus 10 percent of the gravity component, or 25 percent of the gravity component only, whichever is greater.

In cases involving government agencies or entities, such as municipalities, or non-profit organizations, where the circumstances warrant, EPA may determine, based on the nature of the SEPs being proposed, that an appropriate settlement could contain a cash penalty less than the economic benefit of non-compliance. The precise amount of the cash penalty will be determined by the applicable penalty policy.

*2. Calculation of the Cost of the SEP*

To ensure that a proposed SEP is consistent with this Policy, the net present after-tax cost of the SEP, hereinafter called the ''SEP Cost,'' is calculated. In order to facilitate evaluation of the SEP Cost of a proposed SEP, the Agency has developed a computer model called PROJECT. To use PROJECT, the Agency needs reliable estimates of the costs and savings associated with a defendant/ respondent's performance of a SEP. Often the costs will not be estimates but known amounts based on a defendant/ respondent's agreement to expend a fixed or otherwise known dollar amount on a project.

There are three types of costs that may be associated with performance of a SEP (which are entered into the PROJECT model): capital costs (e.g., equipment, buildings); one-time nondepreciable costs (e.g., removing contaminated materials, purchasing land, developing a compliance promotion seminar); and annual operation costs or savings (e.g., labor, chemicals, water, power, raw materials).[10]

In order to run the PROJECT model properly (i.e., to produce a reasonable estimate of the net present after-tax cost of the project), the number of years that annual operation costs or savings will be expended in performing the SEP must be specified. At a minimum, the defendant/respondent must be required to implement the project for the same number of years used in the PROJECT model calculation. If certain costs or savings appear speculative, they should not be entered into the PROJECT model. The PROJECT model is the primary method to determine the SEP cost for purposes of negotiating settlements.[11]

[10] PROJECT does not evaluate the potential for market benefits which may accrue with the performance of a SEP (e.g., increased sales of a product, improved corporate public image, or improved employee morale). Nor does it consider costs imposed on the government, such as the cost to the Agency for oversight of the SEP, or the burden of a lengthy negotiation with a defendant/ respondent who does not propose a SEP until late in the settlement process.

[11] See PROJECT User's Manual, January 1995. If the PROJECT model appears inappropriate to a

EPA does not offer tax advice on whether a company may deduct SEP expenditures from its income taxes. If a defendant/respondent states that it will not deduct the cost of a SEP from its taxes and it is willing to commit to this in the settlement document, and provide the Agency with certification upon completion of the SEP that it has not deducted the SEP expenditures, the PROJECT model calculation should be adjusted to calculate the SEP Cost without reductions for taxes. This is a simple adjustment to the PROJECT model: just enter a zero for variable 7, the marginal tax rate. If a business is not willing to make this commitment, the marginal tax rate in variable 7 should not be set to zero; rather the default settings (or a more precise estimate of the business' marginal tax rates) should be used in variable 7.

If the PROJECT model reveals that a project has a negative cost, this means that it represents a positive cash flow to the defendant/respondent and as a profitable project thus, generally, is not acceptable as a SEP. If a project generates a profit, a defendant/respondent should, and probably will, based on its own economic interests implement the project. While EPA encourages companies to undertake environmentally beneficial projects that are economically profitable, EPA does not believe violators should receive a bonus in the form of penalty mitigation to undertake such projects as part of an enforcement action. EPA does not offer subsidies to complying companies to undertake profitable environmentally beneficial projects and it would thus be inequitable and perverse to provide such subsidies only to violators. In addition, the primary goal of SEPs is to secure a favorable environmental or public health outcome which would not have occurred but for the enforcement case settlement. To allow SEP penalty mitigation for profitable projects would thwart this goal.[12]

*3. Penalty Mitigation*

After the SEP Cost has been calculated, EPA should determine what percentage of that cost may be applied as mitigation against the preliminary total calculated gravity component before calculation of the final penalty. The SEP should be examined as to whether and how effectively it achieves each of the following five factors listed below.

- *Benefits to the Public or Environment at Large.* While all SEPs benefit public health or the environment, SEPs which perform well on this factor will result in significant and quantifiable reduction in discharges of pollutants to the environment and the reduction in risk to the general public. SEPs also will perform well on this factor to the extent they result in significant and, to the extent possible, measurable progress in protecting and restoring ecosystems (including wetlands and endangered species habitats).
- *Innovativeness.* SEPs which perform well on this factor will further the development and implementation of innovative processes, technologies, or methods which more effectively: reduce the generation, release or disposal of pollutants; conserve natural resources; restore and protect ecosystems; protect endangered species; or promote compliance. This includes ''technology forcing'' techniques which may establish new regulatory ''benchmarks.''
- *Environmental Justice.* SEPs which perform well on this factor will mitigate damage or reduce risk to minority or low income populations which may have been disproportionately exposed to pollution or are at environmental risk.
- *Multimedia Impacts.* SEPs which perform well on this factor will reduce emissions to more than one medium.
- *Pollution Prevention.* SEPs which perform well on this factor will develop and implement pollution prevention techniques and practices.

The better the performance of the SEP under each of these factors, the higher the mitigation percentage may be set. As a general guideline, the final mitigation percentage should not exceed 80 percent of the SEP Cost. For small businesses, government agencies or entities, and non-profit organizations, this percentage may be set as high as 100 percent. For any defendant/respondent, if one of the five factors is pollution prevention, the percentage may be set as high as 100 percent. A lower mitigation percentage may be appropriate if the government must allocate significant resources to monitoring and reviewing the implementation of a project.

In administrative enforcement actions in which there is a statutory limit on administrative penalties, the cash penalty obtained plus the amount of penalty mitigation credit due to the SEPs shall not exceed the statutory administrative penalty limit.

**F. Performance by a Third Party**

SEPs are generally performed either by the defendant/respondent itself (using its own employees) and/or by contractors or consultants.[13] In the past in a few cases, a SEP has been performed by someone else, commonly called a third party. Because of legal concerns and the difficulty of ensuring that a third party implements the project as required (since by definition a third party has no legal or contractual obligation to implement the project as specified in the settlement document), performance of a SEP by a third party is not allowed.

**G. Oversight and Drafting Enforceable SEPS**

The settlement agreement should accurately and completely describe the SEP. (See related legal guideline 4 in Section C above.) It should describe the specific actions to be performed by the defendant/respondent and provide for a reliable and objective means to verify that the defendant/respondent has timely completed the project. This may require the defendant/respondent to submit periodic reports to EPA. If an outside auditor is necessary to conduct this oversight, the defendant/respondent should be made responsible for the cost of any such activities. The defendant/respondent remains responsible for the quality and timeliness of any actions performed or any reports prepared or submitted by the auditor. A final report certified by an appropriate corporate official, acceptable to EPA and evidencing completion of the SEP, should be required.

To the extent feasible, defendant/respondents should be required to quantify the benefits associated with the project and provide EPA with a report setting forth how the benefits were measured or estimated. The defendant/respondent should agree that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.

The drafting of a SEP will vary depending on whether the SEP is being performed as part of an administrative or judicial enforcement action. SEPs with long implementation schedules (e.g., 18 months or longer), SEPs which require EPA review and comment on

particular fact situation, EPA Headquarters should be consulted to identify an alternative approach. For example, the December 1993 version of PROJECT does not readily calculate the cost of an accelerated compliance SEP. The cost of such a SEP is the additional cost associated with doing the project early (ahead of the regulatory requirement) and it needs to be calculated in a slightly different manner.

[12] The penalty mitigation guidelines in subsection E.3 provide that the amount of mitigation should not exceed the net cost of the project. To provide penalty mitigation for profitable projects would be providing a credit in excess of net costs.

[13] Of course, non-profit organizations, such as universities and public interest groups, may function as contractors or consultants.

interim milestone activities, and other complex SEPs may not be appropriate in those administrative enforcement actions where EPA lacks injunctive relief authority or is subject to a penalty ceiling. Specific guidance on the proper drafting of SEPs will be provided in a separate guidance document.

### H. Failure of a SEP and Stipulated Penalties

If a SEP is not completed satisfactorily, the defendant/respondent should be required, pursuant to the terms of the settlement document, to pay stipulated penalties for its failure. Stipulated penalty liability should be established for each of the scenarios set forth below as appropriate to the individual case.

1. Except as provided in paragraph 2 immediately below, if the SEP is not completed satisfactorily, a substantial stipulated penalty should be required. Generally, a substantial stipulated penalty is between 50 and 100 percent of the amount by which the settlement penalty was mitigated on account of the SEP.

2. If the SEP is not completed satisfactorily, but the defendant/respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, no stipulated penalty is necessary.

3. If the SEP is satisfactorily completed, but the defendant/respondent spent less than 90 percent of the amount of money required to be spent for the project, a small stipulated penalty should be required. Generally, a small stipulated penalty is between 10 and 25 percent of the amount by which the settlement penalty was mitigated on account of the SEP.

4. If the SEP is satisfactorily completed, and the defendant/respondent spent at least 90 percent of the amount of money required to be spent for the project, no stipulated penalty is necessary.

The determinations of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the defendant/respondent has made a good faith, timely effort to implement the SEP is in the sole discretion of EPA.

### I. EPA Procedures

*1. Approvals*

The authority of a government official to approve a SEP is included in the official's authority to settle an enforcement case and thus, subject to the exceptions set forth here, no special approvals are required. The special approvals apply to both administrative and judicial enforcement actions as follows:[14]

a. Regions in which a SEP is proposed for implementation shall be given the opportunity to review and comment on the proposed SEP.

b. In all cases in which a SEP may not fully comply with the provisions of this Policy, the SEP must be approved by the EPA Assistant Administrator for Enforcement and Compliance Assurance.

c. In all cases in which a SEP would involve activities outside the United States, the SEP must be approved in advance by the Assistant Administrator and, for judicial cases only, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice.

d. In all cases in which a SEP includes an environmental compliance promotion project, the SEP must be approved by the Office of Regulatory Enforcement in OECA. With time, this approval requirement may be delegated to Regional officials.

*2. Documentation and Confidentiality*

In each case in which a SEP is included as part of a settlement, an explanation of the SEP with supporting materials (including the PROJECT model printout, where applicable) must be included as part of the case file. The explanation of the SEP should demonstrate that the five criteria set forth in Section A.3 above are met by the project and include a description of the expected benefits associated with the SEP. The explanation must include a description by the enforcement attorney of how nexus and the other legal guidelines are satisfied.

Documentation and explanations of a particular SEP may constitute confidential settlement information that is exempt from disclosure under the Freedom of Information Act, is outside the scope of discovery, and is protected by various privileges, including the attorney-client privilege and the attorney work-product privilege. While individual Agency evaluations of proposed SEPs are confidential documents, this Policy is a public document and may be released to anyone upon request.

This Policy is primarily for the use of U.S. EPA enforcement personnel in settling cases. EPA reserves the right to change this Policy at any time, without prior notice, or to act at variance to this Policy. This Policy does not create any rights, duties, or obligations, implied or otherwise, in any third parties.

[14] In judicial cases, the Department of Justice must approve the SEP.

[FR Doc. 95–11501 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–P

---

**[OPPT–59344; FRL–4951–5]**

## Certain Chemicals; Approval of a Test Marketing Exemption

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–95–3. The test marketing conditions are described below.

**DATES:** This notice becomes effective April 24, 1995. Written comments will be received until May 25, 1995.

**ADDRESSES:** Written comments, identified by the docket number [OPPT–59344] and the specific TME number should be sent to: TSCA noncofidential center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NEB–607 (7407), 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by [OPPT–59344]. No CBI should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Vera Stubbs, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–447, 401 M St., SW., Washington, DC 20460, (202) 260–5671.

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test

marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–95–3. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–95–3. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.
2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

**T–95–3**

*Date of Receipt:* March 27, 1995. The extended comment period will close May 25, 1995.

*Applicant:* Reichhold Chemicals, Inc.

*Chemical:* Polyurethane adhesives.

*Use:* Adhesive.

*Production Volume:* Confidential.

*Number of Customers:* Confidential.

*Test Marketing Period:* One year. Commencing on first day of commercial manufacture.

*Risk Assessment:* EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health and the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

A record has been established for this notice under docket number [OPPT–59344] (including comments and data submitted electronically as described above). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

**List of Subjects**

Environmental protection, Test marketing exemptions.

Dated: April 24, 1995.

**Paul J. Campanella,**

*Chief, New Chemicals Branch, Office of Pollution Prevention and Toxics.*

[FR Doc. 95–11499 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–F

## EXPORT-IMPORT BANK OF THE U.S.

**[Public Notice 24]**

## Agency Forms Submitted for OMB Review

**AGENCY:** Export-Import Bank of the United States (Ex-Im Bank).

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1980, Ex-Im Bank has submitted a proposed collection of information in the form of a survey to the Office of Management and Budget for review.

**PURPOSE:** The proposed Ex-Im Bank ''Customer Service Satisfaction Survey,'' to exporters of U.S. goods and services, is to be completed by U.S. exporters who have used Ex-Im Bank's services. This survey is one of Ex-Im Bank's tools of providing an evaluation of the effectiveness, utility, strengths and weaknesses of, the relationships established between Ex-Im Bank and the exporting community.

The collection of the information will enable Ex-Im Bank to assess and report to the Executive Branch and the U.S. Congress the private sector's view of its Customer Service and its competitiveness, as required by Executive Order 12862.

**SUMMARY:** The following summarizes the information collection proposal submitted to OMB:

(1) Type of request: new
(2) Number of forms submitted: one
(3) Form Number: EIB 95–7
(4) Title of information collection: Customer Service Satisfaction Survey
(5) Frequency of use: annual
(6) Respondents: Exporters of U.S. goods and services
(7) Estimated total number of annual responses: 1,000
(8) Estimated total number of hours needed to fill out the form: 333.

**ADDITIONAL INFORMATION OR COMMENTS:** Copoies of the proposed application may be obtained from Tamzen Reitan, Agency Clearance Officer, (202) 565–3333. Comments and questions should be directed to Mr. Jeff Hill Office of Management and Budget, Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, DC 20503, (202) 395–3176. All comments should be submitted

within two weeks of this notice. If you intend to submit comments, but are unable to meet this deadline, please advise by telephone that comments will be submitted late.

Dated: May 4, 1995.

**Tamzen C. Reitan,**

*Agency Clearance Officer.*

[FR Doc. 95–11430 Filed 5–9–95; 8:45 am]

BILLING CODE 6690–01–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.

**DATES:** Comments on this information collection must be submitted on or before July 10, 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 3067–0250.

*Title:* Electromagnetic Pulse Protection Inspection and Maintenance Procedures.

*Abstract:* FEMA manages an Electromagnetic Protection Pulse program which provides for the protection of communications facilities against electromagnetic pulse resulting from high altitude nuclear detonation or from environmental disturbances such as lightning and power line transients. Inspections of electrical and electronic devices and other material are performed at periodic intervals as established in the facility's EMP Inspection and Maintenance Plan. Formal inspections are mandatory and are performed on an annual basis, informal inspections occur in conjunction with a significant event, such as recurring systems upsets, electrical storms, etc., and occasional inspections are performed periodically to locate degradation or other problems that occur between other types of inspections. The checklist is used to document and report on these inspection activities. If the checklist shows that EMP protection devices and materials are defective or inoperative and need to be removed, the Regional EMP Program Managers will use the information to replace those devices and materials.

*Type of Respondents:* Business or other for-profit; Federal Government; and State, Local or Tribal Government.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 2,472 hours.

*Number of Respondents:* 375.

*Estimated Average Burden Time per Response:* 6.6 hours.

*Frequency of Response:* Annually, on occasion.

Dated: May 1, 1995.

**Wesley C. Moore,**

*Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 95–11478 Filed 5–9–95; 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 July 10, 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:* Generic clearance of a new collection.

*Title:* Voluntary Customer Surveys to Implement Order 12862—Customer Satisfaction Surveys of State, Local, other Federal agencies, Private sector customers, and applicants.

*Abstract:* FEMA will conduct a variety of customer surveys over a 3-year period to determine customers' perceptions and expectations of the services provided by FEMA as well as their satisfaction with existing services. The survey results will be used to establish customer service standards for FEMA programs and performance standards for FEMA employees.

*Type of Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 5,400 hours.

*Number of Respondents:* 13,000.

*Estimated Average Burden Time per Response:* Surveys (including pilot tests)—15 minutes; Focus Groups—2 hours.

*Frequency of Response:* One-time.

Dated: May 1, 1995.

**Wesley C. Moore,**

*Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 95–11479 Filed 5–9–95; 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 July 10, 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 3067–0235.

*Title:* Residential Basement Floodproofing Certificate.

*Abstract:* The Residential Basement Floodproofing Certificate provides registered engineers and architects a standard means of certifying the floodproofed construction of basements lying below the Base Flood Elevation. The homeowner is responsible for obtaining and paying for the certification and providing it to: (1) The flood insurance agent so that the homeowner receives the ''discounted'' insurance rate applicable to floodproofed basements; and (2) the community building official as recognition that the basement is built according to the standards of the National Flood Insurance Program and is compliant with the communities floodplain management ordinance. The requirements for the certification are contained in a FEMA regulations published at 44 CFR 60.6(c)(2)(iv).

*Type of Respondents:* Individuals and households; State, Local or Tribal Government.

*Estimate of Total Annual Reporting and Recordkeeping Burden:* 192 hours.

*Number of Respondents:* Reporting: 60—Homeowners/Registered Architects and Engineers; Recordkeepers: 46—Insurance Agents/Community Officials.

*Estimated Average Burden Time per Response:* 3 Hours—Homeowners/Registered Architects and Engineers; 15 minutes—Insurance Agents/Communities Officials.

*Frequency of Response:* On occasion.

Dated: May 1, 1995.

**Wesley C. Moore,**

*Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 95–11480 Filed 5–9–95; 8:45 am]

BILLING CODE 6718–01–M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 203–011498.

*Title:* U.S./South America Agreement.

*Parties:*

A.P. Moller-Maersk Line
TRSL, Inc.

*Snyopsis:* The proposed Agreement authorizes the parties to discuss and agree upon rules, rates, rate policies, service items, terms and condition of service contracts or tariffs maintained by any party or by any conference to which any party may be a member. Adherence to any agreement reached is voluntary. In addition, the parties may consult and agree upon the deployment and utilization of vessels, charter space from one another, and rationalize sailings in the trade between U.S. ports and points and ports and points in Brazil, Argentina, Uruguay and Paraguay.

*Agreement No.:* 203–011499.

*Title:* U.S./Caribbean Agreement.

*Parties:*

A.P. Moller-Maersk Line
Sea-Land Service, Inc.
Venezuelan Container Line, C.A.

*Synopsis:* The proposed Agreement authorizes the parties to discuss and agree upon rules, rates, rate policies, service items, terms and condition of service contracts or tariffs maintained by any party or by any conference to which any party may be a member. Adherence to any agreement reached is voluntary. In addition, the parties may consult and agree upon the deployment and utilization of vessels, charter space from one another or from other persons, and rationalize sailings in the trade between U.S. ports and points and ports and points in Venezuela and the Dominican Republic.

*Agreement No.:* 232–011500.

*Title:* Maersk/SL/VCL/Transroll/TRSL Agreement.

*Parties:*

A.P. Moller-Maersk Line
Sea-Land Service, Inc.
Venezuelan Container Line, C.A.
Transroll Navegacao, S.A.
TSRL, Inc.

*Synopsis:* The proposed Agreement authorizes the parties to consult and agree upon the deployment and utilization of vessels, charter space from one another, and rationalize sailings in the trade between U.S. ports and points and ports and points in the Caribbean, Central and South America.

*Agreement No.:* 224–200931.

*Title:* Alabama State Docks Department/Mobile Terminal Contractors, Inc. Cargo and Freight Handling Service Permit.

*Parties:*

Alabama State Docks Department (''Port'')
Mobile Terminal Contractors, Inc. (''MTCI'')

*Synopsis:* The proposed Agreement authorizes MTCI to perform cargo and freight handling services at the Port.

*Agreement No.:* 224–200932.

*Title:* Jacksonville Port Authority/Autoliners, Inc. Terminal Agreement.

*Parties:*

Jacksonville Port Authority (''Port'')
Autoliners, Inc. (''Autoliners'')

*Synopsis:* The proposed Agreement addresses the wharfage rates to be charged to Autoliners on automobiles crossing the Port's Blount Island Marine Terminal facility.

*Agreement No.:* 224–200933.

*Title:* Jacksonville Port Authority/Wallenius Lines North America, Inc. Terminal Agreement.

*Parties:*

Jacksonville Port Authority (''Port'')
Wallenius Lines North America, Inc. (''Wallenius'')

*Synopsis:* The proposed Agreement addresses the cargo handling rates for Wallenius at the Port's Blount Island Marine Terminal facility.

Dated: May 4, 1995.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 95–11427 Filed 5–9–95; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### AMCORE Financial Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval

under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. AMCORE Financial Inc.*, Rockford, Illinois; to acquire Rockford Mercantile Agency, Inc., Rockford, Illinois, and thereby engage *de novo* in check guarantee services, pursuant to § 225.25(b)(22), and rental or sale of related equipment, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 4, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–11473 Filed 5–9–95; 8:45 am]

BILLING CODE 6210–01–F

## Mason-Dixon Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 5, 1995.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Mason-Dixon Bancshares, Inc.*, Westminster, Maryland; to acquire 100 percent of the voting shares of Bank Maryland Corp., Towson, Maryland, and thereby indirectly acquire Bank of Maryland, Towson, Maryland.

**B. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–-2272:

*1. SNB Corporation*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Southern National Bank of Texas, Houston, Texas.

*2. SNB Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of SNB Corporation, Wilmington, Delaware, and thereby indirectly acquire Southern National Bank of Texas, Houston, Texas.

In connection with this application, SNB Corporation, Houston, Texas, also has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, May 4, 1995.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 95–11474 Filed 5–9–95; 8:45 am]

BILLING CODE 6210–01–F

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Agency for Health Care Policy and Research

### Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following advisory committees scheduled to meet during the month of June 1995:

*Name:* Health Services Developmental Grants Review Subcommittee.

*Date and Time:* June 7–8, 1995, 8:00 a.m.

*Place:* Holiday Inn Crowne Plaza, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852

Open June 7, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

*Purpose:* The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

*Agenda:* The open session of the meeting on June 7 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters and reports. During the closed session, the Subcommittee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact J. Terrell Hoffeld, D.D.S., Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

*Name:* Health Services Research Review Subcommittee.

*Date and Time:* June 8–9, 1995, 8:00 a.m.

*Place:* Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Open June 8, 8:00 a.m. to 8:45 a.m.

Closed for remainder of meeting.

*Purpose:* The Subcommittee is charged with the initial review of grant applications

proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research (AHCPR).

*Agenda:* The open session of the meeting on June 8 from 8:00 a.m. to 8:45 a.m. will be devoted to a business meeting covering administrative matters and reports. During the closed sessions, the Subcommittee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6), the Administrator, Agency for Health Care Policy Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1451.

*Name:* Health Care Technology Study Section.

*Date and Time:* June 19–20, 1995, 8:00 a.m.

*Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.*

Open June 19, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

*Purpose:* The Study Section is charged with conducting the initial review of health services research grant applications concerned with medical decisionmaking, computers in health care delivery, and the utilization and effects of health care technologies and procedures.

*Agenda:* The open session on June 19 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administrative matters and reports. The closed session of the meeting will be devoted to reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, Section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care for Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Karen Rudzinski, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1437.

*Name:* Health Services Research Dissemination Study Section.

*Date and Time:* June 29–30, 1995, 8:00 a.m.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Palladian Room, Chevy Chase, Maryland 20815.

Open June 29, 8:00 a.m. to 8:30 a.m.

Closed for remainder of meeting.

*Purpose:* The Study Section is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

*Agenda:* The open session of the meeting on June 29 from 8:00 a.m. to 8:30 a.m. will be devoted to general business matters. During the closed portions of the meeting, the Study Section will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Linda Blankenbaker, Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, Suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1438.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: May 3, 1995.

**Clifton R. Gaus,**

*Administrator.*

[FR Doc. 95–11472 Filed 5–9–95; 8:45 am]

BILLING CODE 4160–90–M

## National Institutes of Health

## Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7735; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

### 2,5–Diamino-3,4–Disubstituted-1,6-F-Diphenyhexane Isoteres Comprising Benzamide, Sulfonamide and Anthranilamide Subunits and Methods Of Using Same

Randad, R.S., Erickson, J.W. (NCI)
Filed 20 Dec 94
Serial No. 08/359,612
Licensing Contact: Robert Benson (301/496–7056 ext 267)

This invention concerns retroviral protease inhibitors which are potential drugs for the treatment of HIV infection. The compounds of the invention contain novel nonpeptidic and achiral substituents, wherein achiral benzamide, sulfonamide and anthranilamide subunits are introduced onto the 2,5-diamino-3,4-disubstituted-1,6-diphenylhexane isostere core. The compounds are more resistant to viral and mammalian protease degradation. The best compounds had a $K_i$ (inhibition constant) of less than 100 pM for HIV protease. CEM cells chronically infected with HIV–1 were used to test anti-retroviral activity. The concentrations needed to inhibit 50% of viral activity were on the order of 5 nM. Therefore, these compounds compare favorably in their anti-viral potency to the best HIV protease inhibitors currently in clinical trials. *[portfolio: Infectious Diseases—Therapeutics, anti-virals, AIDS]*

### Conformationally Locked Nucleoside Analogs

Marquez, V.E., Rodriguez, J.B., Nicklaus, M.C., Barchi, J.J.
(NCI)
Filed 24 Sep 94
Serial No. 08/311,425 (CIP of 08/126,796)
Licensing Contact: Carol Lavrich (301/496–7735 ext 287)

Novel nucleoside analogues have been developed that may facilitate structure-function analysis of anti-HIV compounds. Recently, there has been intense interest in the design and use of nucleoside analogues that can inhibit the replication of viruses such as HIV–1. The three-dimensional conformation of such analogues has been implicated in their ability to successfully inhibit viral replication; however, in the past, it has been difficult to conduct structure-

function analyses because the sugar part of the nucleoside is flexible and the conformation often changes. These newly developed nucleoside analoguess make such studies more feasible because they employ cyclopropane-fused di-deoxynucleosides, which lock the conformation of the sugar part of the molecule in place. *[portfolio: Internal Medicine—Miscellaneous]*

**Mammalian Bilirubin UDP-Glucoronosyltransferase Clones, and Methods for Use Thereof**

Owens, I., Ritter, J. (NICHD)
Filed 8 Sep 94
Serial No. 08/303,315 (CIP of 08/209,688, FWC of 07/639,453)
Licensing Contact: Carol Lavrich (301/496–7735 ext 287)

Liver transplantation is now the only treatment for Crigler-Najjar Type I syndrome. Other hyperbilirubinemic syndromes are difficult and expensive to diagnose. This cDNA clone encodes a mammalian bilirubin UDP-glucoronosyltransferase. Applications include gene therapy for patients with Crigler-Najjar Type I syndrome, a gene-based fetal diagnostic probe for the syndrome, and diagnostic tools for other hyperbilirubinemic syndromes such as Gilbert syndrome. *[portfolio: Internal Medicine—Miscellaneous]*

**Nucleotide and Deduced Amino Acid Sequences of the Envelope 1 Gene Of 51 Isolates Of Hepatitis C Virus and the Use Of Reagents Derived from These Sequences in Diagnostic Methods and Vaccines**

Bukh, J., Miller, R.H., Purcell, R.H. (NIAID)
Filed 15 Aug 94
Serial No. 08/290,665
Licensing Contact: Girish Barua (301/496–7735 ext 263)

The invention is in the field of hepatitis virology and relates to complete nucleotide and deduced amino acid sequences of the envelope 1 (E1) gene of hepatitis C virus (HCV) isolates from around the world and the grouping of these isolates into twelve distinct HCV genotypes. More specifically, this invention covers oligonucleotides, peptides and recombinant proteins derived from the envelope 1 gene sequences of the 51 isolates of hepatitis C virus and to diagnostic methods and vaccines which employ these reagents. *[portfolio: Infectious Diseases—Vaccines]*

**Isolation of A New Murine Helicobacter Bacteria, Tentatively Classified as A Helicobacter Hepaticus**

Ward, J.M., Fox, J.G., Collins, M.J., Gorelick, P.L., Benveniste, R.E., Tully, J.G., Gonda, M.A. (NCI)
Filed 24 Jun 94
Serial No. 08/266,414
Licensing Contact: Girish Barua (301/496–7735 ext 263)

An isolated bacterium of the genus Helicobacter, characterized by the 16S ribosomal RNA encoding nucleotide sequence is described. An isolated nucleic acid comprising the nucleotide sequence is also defined. Such a nucleic acid can be used for diagnosis of infection with H. hepaticus. A nucleic acid of the present invention in a vector suitable for expression of the nucleic acid is provided. The vector can be in a host suitable for expressing the nucleic acid. A purified antigen specific for H. hepaticus and a method of making an animal model for chronic Helicobacter infection is also described. [portfolio: Infectious Diseases—Miscellaneous]

**Cloning, Expression, and Diagnosis of Human Cytochrome P450 2C19: The Principal Determinant of S-Mephenytoin Metabolism**

Goldstein, J.A., Romkes-Sparks, M., DeMorais, S. (NIEHS)
Filed 6 May 94
Serial No. 08/238,821 (CIP of 08/201,118, CIP of 07/864,962)
Licensing Contact: Carol Lavrich (301/496–7735 ext 287)

Two novel cytochrome P450 enzymes have been isolated and characterized that appear be the principal human determinant of S-mephenytoin metabolism. This invention has particular application to the development of more effective anticonvulsant drugs. Mephenytoin is used for the control of grand mal, focal, Jacksonian, and psychomotor epileptic seizures that are refractory to other types of anti-convulsant drugs. In most individuals, mephenytoin is metabolized by 4/ -hydroxylation of S-mephenytoin. This is accomplished by a cytochrome P450 enzyme in liver cells; however, some subpopulations of individuals have defects in this P450 enzyme, resulting in reduced levels of S-mephenytoin 4/ -hydroxylase activity and severe side effects. The DNA sequence that encodes enzymes from the cytochrome P450 2C subfamily of enzymes has been isolated and cloned. Polymorphisms of these enzymes, designated 2C18 and 2C19, appear to be the principal reason that certain individuals cannot effectively metabolize S-mephenytoin and, thus, have adverse side effects with this drug. This invention provides purified cytochrome P450 2C19 peptides and purified cytochrome P450 2C18 polypeptides, as well as the CDNA encoding these polypeptides. The invention, among other things, also provides methods for screening for a drug that is metabolized by S-mephenytoin 4/ -hydroxylase activity, for determining the metabolites activated by a xenobiotic or carcinogenic compound, and for diagnosing patients with a deficiency in S-mephenytoin 4/ -hydroxylase activity. [portfolio: Internal Medicine—Miscellaneous]

**Rotavirus Strain And Related Composition**

Glass, R.I., Gentsch, J.R., Das, B.K., Bhan, M.K. (CDC)
Filed 15 Apr 94
Serial No. 08/231,041
Licensing Contact: Girish Barua (301/496–7735 ext 263)

Rotavirus is the leading cause of severe diarrheal disease in infants in both developed and developing countries, and development of a vaccine for this disease is therefore a global priority. The availability of both cloned rotavirus genes and protein sequences of important rotavirus antigens should permit yet additional approaches to vaccine development.

This invention covers an isolated rotavirus of strain G9P11 and an isolated nucleic acid encoding the rotavirus and a purified antigen specific for rotavirus. An isolated nucleic acid that selectively hybridizes under high stringency conditions with the nucleic acid encoding the virus is provided. A purified antibody which selectively binds the virus of strain G9P11 is covered. The G9P11 rotavirus in a pharmaceutical carrier for administration in an immunization protocol is disclosed. Also provided are an isolated rotavirus of strain G9P11, wherein the G9 gene and P11 gene are substituted. [portfolio: Infectious Diseases—Diagnostics, viral; Infectious Diseases—Vaccines, viral]

**Hepatitis C Virus Core Peptide for Stimulation Of Cytotoxic T Lymphocytes**

Berzofsky, J.A., Feinstone, S.M., Shirai, M. (NCI)
Filed 8 Apr 94
Serial No. 08/224,973
Licensing Contact: Girish Barua (301/496–7735 ext 263)

The invention covers a series of peptide fragments of hepatitis C virus core protein and their use as activators of cytotoxic T lymphocytes. The peptides can be used as vaccines or components of vaccines to prevent hepatitis C. Besides the peptide

fragments, pharmaceutical compositions and methods of immunization and diagnostics are also claimed. [portfolio: Infectious Diseases—Therapeutics, antivirals]

**Superactive Vasoactive Intestinal Peptide Antagonist**

Gozes, I., Brenneman, D.E., Fridkin, M., Moody, T.W. (NICHD)
Filed 7 Feb 94
Serial No. 08/194,591
Licensing Contact: Carol Lavrich (301/496–7735 ext 287)

A potent antagonist of the vasoactive intestinal polypeptide (VIP) has been developed that may be useful in inhibiting the growth of certain kinds of lung cancers, among others. VIP is a widely distributed peptide hormone and neurotransmitter that mediates a variety of physiologic responses including gastrointestinal secretion; relaxation of gastrointestinal, vascular, and respiratory smooth muscle; pituitary hormone secretion; and penile erection. Receptors for VIP also have been detected in cells derived from small cell lung carcinoma and three other major types of lung cancer, and VIP has been shown to promote the growth of these types of lung cancers. Traditionally, lung cancer is treated with chemo- and/or radiation therapy, but survival rates for these types of therapies are quite low. Researchers have now developed a number of short polypeptide sequences that are able to bind to VIP receptors in various types of cells but do not display biologic activity. Thus, these polypeptides are potent inhibitors of VIP activity and may be effective chemotherapeutic agents in the treatment of certain VIP-sensitive lung cancers. These polypeptides, which are designed to discriminate between the various VIP receptors in the body, also may be useful for delineating the physiologic function of VIP in the CNS and other tissues. [portfolio: Internal Medicine—Miscellaneous]

**IgE-Binding Epitopes of A Major Heat-Stable Crustacean Allergen Derived From Shrimp**

Metcalfe, D.D., Martin, B.M., Rao, P.V.S. (NIAID)
Filed 10 Nov 93
Serial No. 08/149,809
Licensing Contact: Carol Lavrich (301/496–7735 ext 287)

Epitopes of a major heat-stable shrimp allergen, which may be valuable for desensitizing individuals who are allergic to shrimp and other crustacea, have been developed. Crustacea are among the foods most frequently associated with immunoglobulin E (IgE)-mediated type I hypersensitive reactions in individuals with food allergies. Previously, there has been no method for effectively desensitizing individuals to crustacea-related allergic reactions. This problem has been overcome by isolating the IgE allergenic epitopes of the SA-I and SA-II heat-stable shrimp antigens. These epitopes—or their peptide derivatives—could potentially be given to patients in order to desensitize them to the antigens. The use of antigenic epitopes for desensitization is preferable to using the entire antigen because it minimizes the possibility of a severe adverse reaction. Because this IgE-binding antigen is highly conserved among crustacea, potential application includes diagnosis and treatment of a wide range of crustacea-induced allergies with only these two allergenic epitopes. [portfolio: Internal Medicine—Miscellaneous]

**Nitric Oxide-Releasing Compounds for the Sensitization Of Hypoxic Cells in Radiation Therapy**

Mitchell, J.B., Krishna, M.C., Wink, D., Liebman, J.E., Russo, A. (NCI)
Filed 8 Oct 93
Serial No. 08/133,574
Licensing Contact: Carol Lavrich (301/496–7735 ext 287)

A novel method has been developed for sensitizing oxygen-poor, or hypoxic, tumor cells, which will increase the effectiveness of radiation treatment. It has long been known that ionizing radiation is more effective in killing cancer cells if the cells are in an oxygen-rich environment; however, the farther tumor cells are away from the blood supply, the more hypoxic they are and the more resistant they are to radiation therapy. Current methods for delivering oxygen to hypoxic cells have limitations because they are toxic to normal tissue, require oxygen for their activity, or they have too short a half-life. This development overcomes such problems by employing a nitrous oxide (NO)-containing compound that spontaneously releases NO under physiologic conditions without requiring oxygen. This compound—which has a relatively long half-life and is nontoxic to normals cells—has the dual advantages of being able to sensitize hypoxic tumor cells to ionizing radiation while protecting normal cells from the effects of radiation. [portfolio: Internal Medicine—Therapeutics, cardiology]

**Transmission-Blocking Vaccine Against Malaria**

Kaslow, C.K., Isaacs, S., Moss, B. (NIAID)
Filed 23 Aug 93
Serial No. 08/110,457 (CON of 07/908,765, CON of 07/658,845)
Licensing Contact: Robert Benson (301/496–7056 ext 267)

A transmission-blocking vaccine developed against malaria contains a recombinant virus, which encodes a unique portion of the sexual-stage surface antigen of *Plasmodium falciparum* (referred to as Pfs25), or the Pfs25 protein purified from infected host cells. Mice inoculated with the recombinant virus developed antibodies capable of blocking transmission of the virus. None of the mAbs known to block transmission recognize the reduced Pfs25 antigen. This vaccine, which induces high, long-lasting titers at low cost, can be useful for controlling malaria. [portfolio: Infectious Diseases—Vaccines, parasite]

**Rat Thyrotropin Receptor Gene, and Its Uses**

Kohn, L.D., Akamizu, T., Ikuyama, S., Saji, M., Kosugi, S., Ban, T. (NIDDK)
Filed 29 Nov 93
Serial No. 08/064,058
Licensing Contact: Carol Lavrich (301/496–7735 ext 287)

The rat thyrotropin receptor gene has been cloned, which will make it significantly easier to study this important biologic receptor and to develop therapies for thyroid gland disorders. Thyrotropin, or thyroid stimulating hormone (TSH), is a pituitary hormone that regulates the development and activity of the thyroid gland. Abnormal binding of thyrotropin to its specific thyroid cell receptor may be the cause of variety of syndromes such as hypothyroidism; however, the *in situ* structure of the thyrotropin receptor remains unclear because a number of proteins appear to bind to it. Pure sources of this receptor are unavailable because of the extraordinarily small numbers of receptors in thyroid cells. Although thyrotropin receptor genes previously have been cloned for two species (dog and human), a more desirable starting point for elucidating the structure and function of the thyrotropin receptor would be to study it in a more utilizable animal model, such as the rat. The gene product of the cloned FRTL–5 rat thyroid cell receptor can be used in assays to look for ligands that bind to the receptor. Truncated forms of the protein also may be used for studying the structure and function of various domains of the receptor. Ultimately, this invention is useful for developing treatments for disorders arising from dysfunctions of this receptor. [portfolio: Internal Medicine—Miscellaneous]

**Nucleotide-Deduced Amino Acid Sequence, Isolation, and Purification of Heat Shock Chlamydial Proteins**

Morrison, R.B., Caldwell, H.D. (NIAID)
Filed 25 Feb 92
Serial No. 07/841,323 (DIV of 07/679,302, DIV of USPN 5,071,962)
Licensing Contact: Carol Lavrich (301/496–7735 ext 287)

The chlamydial heat shock protein (HSP60) is an immunodominant genus common antigen which has been implicated in immunopathologic delayed type hypersensitivity reactions during chlamydial infections. The HypB gene which encodes the chlamydial HSP60 has been cloned and characterized. High levels of HSP60 expression have been obtained in prokaryotic vectors and methods have been developed for the purification of the chlamydial HSP60 protein. Availability of large quantities of purified recombinant chlamydial HSP60 offers novel approaches to preventing, treating, and diagnosing chlamydial infections of humans. [portfolio: Infectious Diseases—Diagnostics, bacterial]

**Methods and Compositions for Diagnosing Cat Scratch Disease and Bacillary Angiomatosis**

Regnery, R.L., Anderson, B.E. (CDC)
Serial No. 07/822,539
Patent Issued 21 Mar 95
U.S. Patent No. 5,399,485
Licensing Contact: Carol Lavrich (301/496–7735 ext 287)

A previously unidentified pathogenic species of the rickettsia-like *Bartonella*, named *B. henselae, sp. nov.*, has been identified and characterized. (Note: The genus designation Bartonella is now applied to and replaces the *Rochalimaea* genus designation.) This new organism causes two clinically related diseases: Bacillary angiomatosis and cat scratch disease. Currently, diagnosis of *Bartonella* diseases is limited to detection of the etiologic agent associated with ''trench fever'', referred to as *B. quintata.* Novel diagnostic tests using immunofluorescence assays or ELISAs can detect the newly discovered pathogen in sera from infected individuals and distinguish it from *B. quintata,* thus offering improved differential diagnosis for disease syndromes such as ''trench fever'', bacillary angiomatosis, cat scratch disease, and bacillary peliosis hepatitis. [portfolio: Infectious Diseases—Diagnostics, bacterial]

**Effect of Cadmium on Human Ovarian Cancer Cells With Cisplatin Resistance**

Bo Lee, K., Parker, R.J., Reed, E. (NCI)
Filed 3 Mar 95
Serial No. 08/398,460
Licensing Contact: Raphe Kantor (301/496–7735 ext 247)

The present invention describes Cadmium (Cd) as a potential anticarcinogenic compound useful in treating ovarian cancer. The inventors observed strong tumor suppressive effects when applied to human ovarian cancer cell lines *in vitro.* The effects of Cd on cellular sensitivity, cellular drug accumulation and efflux, and Cd-DNA adduct formation and repair were examined. Cadmium is shown to have a subcellular profile that is similar, though not identical, to cisplatin, suggesting the possibility of future use of CD as an anti-cancer agent. [portfolio: Cancer—Therapeutics, conventional chemotherapy, antimetabolites]

**Trapping of Aflatoxins and Phytoestrogens**

Umrigar, P.P., Kuan, S.S. (FDA)
Filed 6 Jan 93
Serial No. 08/001,573
Licensing Contact: John Fahner-Vihtelic (301/496–7735 ext 285)

A unique process has been invented for removing aflatoxins and phytoestrogens from food samples that is a significant improvement over currently available methods. Aflatoxins are carcinogenic substances that are found in foods such as grains and peanuts and, thus, are a danger to public health. Phytoestrogens—structurally related to aflatoxins—are found in soy products and also are of concern to public health. Therefore, it is important to be able to measure concentrations of these compounds in foodstuffs. The current method for determining aflatoxin or phytoestrogen concentrations in foods requires passing a food sample through an affinity column containing immobilized antibodies specific for aflatoxins or a solid phase extraction (SPE) column for phytoestrogens. The bound aflatoxins or phytoestrogens are eluted from the affinity column and then measured using high performance liquid chromatography; however, such affinity columns and SPE columns are extremely expensive, have limited shelf life, and cannot be reused. These limitations have been overcome by developing columns packed with new derivatives of a copolymer of cyclodextrin and epichlorohydrin. These new copolymers, which have proven particularly useful in trapping aflatoxins and phyto-estrogens, are extremely stable and are not damaged when aflatoxins or phytoestrogens are removed by a suitable solvent. Thus, these materials are re-usable. [portfolio: Devices/Instrumentation—Miscellaneous]

Dated: May 1, 1995.

**Barbara M. McGarey,**

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 95–11422 Filed 5–9–95; 8:45 am]

BILLING CODE 4140–01–P

## National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Alcohol Abuse and Alcoholism.

The National Advisory Council on Alcohol Abuse and Alcoholism meeting on June 1 will be open to the public, as noted below, to discuss Institute programs and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contract Ida Nestorio at 301–443–4375.

The following meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These 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.

Summaries of the meetings and the rosters of committee members may be obtained from: Ms. Ida Nestorio, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, Willco Building, Suite 409, 6000 Executive Blvd., Rockville, MD 20892–7003, Telephone: 301–443–4375. Other information pertaining to the meetings can be obtained from the contact person indicated.

*Name of Committee:* National Advisory Council on Alcohol Abuse and Alcoholism.

*Executive Secretary:* James F. Vaughan, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–4375.

*Dates of Meeting:* June 1, 1995.

*Place of Meeting:* Delegate Room D, Building 45 (Natcher), NIH Campus, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* June 1, 10:30 a.m. to adjournment.

*Agenda:* Dicussion of Institute extramural research programs, health services research, and other program and peer review issues relevant to Council activities.

*Closed:* June 1, 8 a.m. to 10:30 a.m.

*Agenda:* To review and evaluate grant applications.

The following review committee meetings will be totally closed.

*Name of Committee:* Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee.

*Dates of Meeting:* June 5–7, 1995.

*Time:* 9 a.m. to adjournment.

*Place of Meeting:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Antonio Noronha, Ph.D., Scientific Review Administrator, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9419.

*Agenda:* To review and evaluate grant applications.

*Name of Committee:* Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.

*Dates of Meeting:* June 8–9, 1995.

*Time:* 8:30 a.m. to adjournment.

*Place of Meeting:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Elsie D. Taylor, Scientific Review Administrator, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–9787.

*Agenda:* To review and evaluate grant applications.

*Name of Committee:* Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

*Dates of Meeting:* June 8–9, 1995.

*Time:* 8:30 a.m. to adjournment.

*Place of Meeting:* Holiday Inn, 480 King Street, Alexandra, VA.

*Contact Person:* Thomas D. Sevy, M.S.W., Scientific Review Administrator, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–6106.

*Agenda:* To review and evaluate grant applications.

*Name of Committee:* Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

*Dates of Meeting:* June 15–17, 1995.

*Place of Meeting:* Double Tree Hotel, Denver, CO.

*Time:* 9 a.m. to adjournment.

*Contact Person:* Ronald Suddendorf, Ph.D., Scientific Review Administrator, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003, 301–443–2932.

*Agenda:* To review and evaluate grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.281, Scientist Development Award, Research Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.891, Alcohol Research Center Grants; National Institutes of Health).

Dated: May 3, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–11421 Filed 5–9–95; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Arthritis and Musculoskeletal and Skin Disease; Notice of Meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on June 1 and 2, 1995, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public June 1 from 8:30 a.m. to 9 a.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on June 1 from 9 a.m. to approximately 5 p.m. and if necessary the closed portion will continue on June 2 from 8:30 a.m. to adjournment in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Individuals who plan to attend and need special assistance, such a sign language interpretation or other reasonable accommodations, should contact Dr. Tommy Broadwater, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Natcher Building, Room 5AS–13, Bethesda, Maryland 20892, (301) 594–2463.

A summary of the meeting and roster of the members may be obtained from the Extramural Programs Office, NIAMS, Natcher Bldg., Rm. 5AS–13, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–2463.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: May 3, 1995.

**Susan K. Feldman,**

*NIH Committee Management Officer.*

[FR Doc. 95–11419 Filed 5–9–95; 8:45 am]

BILLING CODE 4140–01–M

## National Heart, Lung, and Blood Institute; Notice of Meeting

Notice is hereby given of the meeting of the National Heart Attack Alert Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute on June 13, 1995, from 8:30 a.m. to 3:15 p.m., at the Bethesda Holiday Inn Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland 20814, (301) 652–2000.

The entire meeting is open to the public. The Coordinating Committee is meeting to discuss the progress of the National Heart Attack Alert Program with its participating organizations. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Ms. Mary McDonald Hand, Coordinator, National Heart Attack Alert Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, 31 Center Drive MSC 2480, Bethesda, Maryland 20892–2480, (301) 496–1051.

Dated: May 3, 1995.

**Claude Lenfant,**

*Director, NHLBI.*

[FR Doc. 95–11425 Filed 5–9–95; 8:45 am]

BILLING CODE 4140–01–P

## National Institute of Mental Health; 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 meetings of the National Institute of Mental Health Special Emphasis Panel:

**Agenda/Purpose**

To review and evaluate grant applications.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* June 5, 1995.

*Time:* 2 p.m.

*Place:* Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Phyllis D. Artis, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* June 6, 1995.

*Time:* 12:30 p.m.

*Place:* Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Phyllis D. Artis, Grant Technical Assistant, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: May 3, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95–11420 Filed 5–9–95; 8:45 am]

**BILLING CODE 4140–01–M**

## Prospective Grant of Exclusive License: Oncoimmunins

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in a U.S. Patent 5,364,619 and U.S. Patent Applications; USSN 07/764,695 and USSN 08/218,023 and corresponding foreign patent applications each entitled, ''Oncoimmunins'' to OncoImmunin, Inc. of Kensington, Maryland. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Tumor-infiltrating lymphocytes (TILs) have shown in vivo antitumor efficacy in both animal and human studies. Functions thought necessary for antitumor activity include cytolysis, homing, and proliferation at tumor sites. T-cell mitogens of tumor origin have been suggested to be responsible, in part, for the local stimulation of T-lymphocytes around tumors. Two tumor-derived, soluble proteins named Oncoimmunin-L and Oncoimmunin-M have been isolated and partially characterized. Oncoimmunin-L is a T-cell mitogen and Oncoimmunin-M is a myeloid differentiation inducing agent. The partial characterization of these two factors has shown that they are similar to human leukocyte elastase inhibitor and human lactate dehydrogenase M, respectively. As cells of both lymphoid and myeloid origin are known to play roles in immune defense, factors which can modulate their number and/or function may be useful in the diagnosis and treatment of cancer. Since these factors are derived from tumors, their appearance in blood may signal the presence of tumor or of metastatic disease. The in vivo bioactivities of these factors suggests their utility as therapeutic agents for cancer and infectious diseases.

**ADDRESSES:** Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 247; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in any field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before July 10, 1995 will be considered.

Dated: April 24, 1995.

**Maria C. Freire,**

*Director, Office of Technology Transfer.*

[FR Doc. 95–11423 Filed 5–9–95; 8:45 am]

**BILLING CODE 4140–01–P**

## Prospective Grant of Exclusive License: Neuro-Derived Fetal Cell Lines for Transplantation Therapy

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent 4,707,448, entitled ''Immortal Line of Human Fetal Glial Cells,'' U.S. Patent Application SN 08/046,527 entitled ''Use of Neuro-Derived Fetal Cell Line for Transplantation Therapy'' and corresponding foreign patent applications to Pro-Virus, Inc. of Rockville, Maryland. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent discloses a novel immortalized fetal glial cell line, designated SVG. The pending patent application discloses the methods of using such cell lines or genetically modified clones thereof for therapeutic purposes to treat various neurological diseases and disorders via transplantation of the cell lines into the patient. Cell lines, such as SVG, have the advantage of being a continually renewable resource and relatively homogenous. Additionally, such cell lines eliminate the significant safety concerns associated with primary human fetal tissue transplants that may harbor opportunistic disease-causing agents and may be subjected to a battery of tests to ensure their safety and efficacy before being used in transplantation.

**ADDRESSES:** Requests for copies of the patent and the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Mr. Arthur J. Cohn, Esq., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20892–3804. Telephone: (301) 496–7735 ext 284; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated

licenses. Only written comments and/or applications for a license which are received by NIH on or before July 10, 1995 will be considered.

Dated: April 26, 1995.

**Maria C. Freire,**

*Director, Office of Technology Transfer.*

[FR Doc. 95–11424 Filed 5–9–95; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. N–95–3799; FR–3711–N–03]**

## Office of the Assistant Secretary for Public and Indian Housing; Announcement of Funding Awards for Technical Assistance to Public Housing Authorities and Public Housing Police Departments

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing.

**ACTION:** Announcement of funding awards.

**SUMMARY:** According to section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the funding award for Fiscal Year (FY) 1995 Technical Assistance to Public Housing Authorities and Public Housing Police Departments. The purpose of this document is to announce the name and address of the award winner and the amount of the award.

**FOR FURTHER INFORMATION CONTACT:** Malcolm E. Main, Crime and Prevention Division, Office Community Relations and Involvement, Public and Indian Housing, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC. 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

### I. Authority

This grant is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Pub. L. 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102–550, approved October 28, 1992).

### II. Federal Fiscal Year 1995 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1995, (approved September 28, 1994, Pub. Law 103–327), (95 App. Act) appropriated $290 million for the Drug Elimination Program. Of the total $290 million appropriated, $10 million will fund drug elimination technical assistance, contracts and other assistance training, program assessments, and execution for or on behalf of public housing and resident organizations (including the cost of necessary travel for participants in such training). The funding announced under this notice is a part of this $10 million.

### III. Grant Award

On June 28, 1994, HUD published a Notice of Funding Availability (NOFA) for Technical Assistance to Public Housing Authorities and Public Housing Police Departments (59 FR 33372) announcing the availability of up $1.5 million in FY 1994 funds for a 1-year base period with 4 option years for comparable amounts based upon an evaluation of grant performance and the availability of funds. The Department reviewed, evaluated and scored the applications received based on the criteria in the NOFAs. As a result, HUD has funded the application announced below. The announcement of the FY 1994 award, in the amount of $1,499,348, was published on October 20, 1994 (59 FR 52983). This notice announces the award of $2,000,000 in FY 1995 funding to continue activities for two option years. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipient of this funding award, as follows:

Grant Recipient: Center for Public Safety, Inc.
Recipient Contact Person: Thomas J. Shaughnessy.
Address: Center for Public Safety, Inc., Washington Dulles International Airport, PO Box 20261, Washington, DC 20041–2261.
Telephone Number: (703) 661–2168.
Original Award Amount: $1,499,348.
Amendment Grant Award Amount: $2,000,000.
Total Grant Award Amount: $3,499,348.

### General Objectives

The United States Department of Housing and Urban Development (HUD) and the Center for Public Safety, Inc., (grantee) have entered into a grant agreement for $3,499,348 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to: (1) Develop a program to improve public housing police departments in Baltimore HA and Community Development, Baltimore, MD; Boston HA, Boston, MA; Buffalo HA, Buffalo, NY; Cuyahoga Metropolitan HA, Cleveland, OH; HA of the City of Los Angeles, Los Angeles, CA; HA of the City of Oakland, Oakland, CA; HA of the City of Pittsburgh, Pittsburgh, PA; HA of the City of Waterbury, Waterbury, CT; Virgin Islands HA, Virgin Islands; Philadelphia HA, and Philadelphia, PA, (2) facilitate law enforcement service agreements between housing authorities and local government, and (3) provide the technical assistance to implement the program and agreements.

This is a cost-reimbursable grant for $3,499,348 for a three year base period, with two optional years. Each additional fiscal year award will be for comparable amounts based upon an evaluation of grant performance and the availability of funds.

Dated: March 18, 1995.

**Joseph Shuldiner,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 95–11440 Filed 5–9–95; 8:45 am]

BILLING CODE 4210–33–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## Notice of intent to prepare an Environmental Impact Statement for the Proposed Establishment of a National Wildlife Refuge in Georgetown, Horry, and Marion Counties, South Carolina, and Notice of Meetings to Seek Public Participation

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

**ACTION:** Notice of intent and meetings.

**SUMMARY:** This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, intends to prepare an environmental impact statement (EIS) for the proposed establishment of a national wildlife refuge in Georgetown, Horry, and Marion Counties, South Carolina, and plans to hold two scoping meetings in the vicinity of the proposed refuge to involve the public in the preparation of the EIS.

**DATES:** The Service will hold two scoping meetings as follows: (1) At 7:00 p.m. on June 20, 1995, at the Georgetown High School Auditorium, Georgetown, South Carolina; and (2) at

7:00 p.m. on June 21, 1995, at the Horry County Council Chambers, Conway, South Carolina.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles R. Danner, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345.

**SUPPLEMENTARY INFORMATION:** The study area for the proposed refuge includes approximately 42,000 acres of wetlands and upland forests between the Intracoastal Waterway and U.S. Highway 701 north of Winyah Bay in Coastal South Carolina. The boundaries of the proposed refuge have not been determined. The specific location will be based on availability of land, ecosystem needs, and public comments on the suitability of the proposal.

The purpose of the proposed refuge is to protect an important component of the Winyah Bay ecosystem for the benefit of endangered and threatened species, migratory birds, anadromous fish, and forest wildlife. The study area contains extensive freshwater tidal wetlands; large contiguous blocks of bottom land hardwood forests; and upland plant communities consisting of longleaf and loblolly pine and mixed hardwoods such as turkey, water,and laurel oak. It provides some of the most valuable production and wintering habitat for wood ducks in the state and is recognized as a key emphasis area in the North American Waterfowl Management Plan. The associated upland forests provide habitat for the red-cocked woodpecker, bald eagle, and wood stork, all federally listed endangered species. Another endangered species, the shortnose sturgeon, inhabits the area's rivers and waterways.

Dated: May 1, 1995.

**Noreen K. Clough,**

*Regional Director.*

[FR Doc. 95–11471 Filed 5–9–95; 8:45 am]

BILLING CODE 4310–55–M

## Bureau of Land Management

**[AK–964–1410–00–P and F–14932–A2]**

## Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Shaktoolik Native Corporation for approximately 5,992 acres. The lands involved are in the vicinity of Shaktoolik, Alaska, within T. 13 S., R. 11 W., and T. 11 S., R. 14 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 9, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**Ana M. Stafford,**

*Land Law Examiner, Branch of Northern Adjudication.*

[FR Doc. 95–11470 Filed 5–9–95; 8:45 am]

BILLING CODE 4310–JA–P

**[OR–015–95–1610–00: G5–116]**

## High Desert Management Framework Plan Amendment, Lake Abert Area of Critical Environmental Concern (ACEC)

**AGENCY:** Bureau of Land Management (BLM), DOI.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act, section 202(f) of the Federal Land Policy and Management Act, and 43 CFR Part 1610, the Lakeview District has completed a draft plan amendment and environmental impact statement (EIS) covering a proposal to designate the Lake Abert area as an ACEC. The draft plan and EIS is expected to be available for review on or about May 12, 1995.

The planning area is located north of Valley Falls in central Lake County, Oregon, and covers approximately 120,570 acres, of which approximately 99,900 acres are administered by the BLM. This area was nominated as a potential ACEC by the Oregon Waterfowl and Wetlands Association and the Oregon Department of Fish and Wildlife in 1992. The Lakeview District evaluated the area in accordance with 43 CFR Part 1610.7–2 and found it met the ACEC relevance and importance criteria for four resource values: prehistoric cultural values, scenic values, wildlife values, and natural processes. The document presents ten management goals, objectives to measure those goals, and seven management alternatives for BLM-administered lands within the planning area. The alternatives range from no action (no change in present management), to designating portions of the planning area as an ACEC with somewhat restrictive management, to designating the entire planning area as an ACEC with very restrictive management.

**DATES:** This notice announces the beginning of the ninety-day public review period. Interested individuals, organizations, and other agencies are encouraged to review the document and provide written comments by August 16, 1995. In addition, two public meetings are planned in June 1995 at the locations specified below.

**MEETING ADDRESSES:** Meeting location (1) is BLM conference room, Lakeview District Office, 1000 South 9th Street, Lakeview, Oregon, at 6:30 p.m. on June 27, 1995. Meeting location (2) is Room 161 of the Boyle Education Center, Central Oregon Community College, 2600 NW College Way, Bend, Oregon, at 6:30 p.m. on June 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Paul Whitman, BLM, Lakeview District Office, P.O. Box 151, Lakeview, Oregon 97630 (Telephone: 503–947–6110).

**SUPPLEMENTARY INFORMATION:** Those individuals, organizations, native American tribes, and agencies with a known interest in the proposal have been sent a copy of the draft plan and EIS. Persons wishing to be added to the mailing list or desiring additional copies should contact the point of contact listed above. Reading copies of the document are available at the Lake, Klamath, and Harney County, Oregon libraries and at the following BLM locations: Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets, NW, Washington DC 20240, and Public Room, Oregon State Office, 1515 SW 5th, Portland, Oregon 97201.

**Scott R. Florence,**

*Acting District Manager.*

[FR Doc. 95–11452 Filed 5–9–95; 8:45 am]

BILLING CODE 4310–33–P

[NM–060–1212–00, 606]

## Notice of Intent To Prepare Ft. Stanton Management Framework Plan Amendment (MFPA); Roswell District, NM

**AGENCY:** Bureau of Land Management (BLM), Roswell District, New Mexico.

**ACTION:** Notice of intent and invitation to participate in a plan amendment/environmental assessment to address the impacts of a competitive bid vegetative sale of forage resources by livestock grazing at Ft. Stanton, New Mexico.

**SUMMARY:** The BLM will prepare a Management Framework Plan Amendment/Environmental Assessment for the purpose of addressing the impacts of a vegetative sale using livestock grazing on approximately 20,932 acres on Ft. Stanton. Ft. Stanton is located six miles west of the village of Lincoln in Lincoln County, NM.

**DATES:** Written comments regarding the planning issues to be addressed in this plan amendment and the planning criteria to be used must be submitted on or before June 12, 1995. Written comments will be employed to obtain public input into the planning process. This method will be to receive public comments from the public in response to this Notice of Intent.

**ADDRESSES:** Comments should be sent to the District Manager, at the Bureau of Land Management, Roswell District Office, 1717 West 2nd Street, Roswell, NM 88201–2019, or the Area Manager, at the Roswell Resource Area Office, Federal Building, 5th and Richardson, P.O. Drawer 1857, Roswell, NM 88202–1857.

**FOR FURTHER INFORMATION CONTACT:** Timothy R. Kreager, Area Manager, Roswell Resource Area, P.O. Drawer 1857, Roswell, NM 88202–1857; telephone (505) 624–1790.

**SUPPLEMENTARY INFORMATION:**

Description of the Proposed Planning Action: The proposed action is to amend the Ft. Stanton MFPA for the purpose of allowing a vegetative sale for livestock grazing of the forage resources through a competitive bid process by private interest on the public lands within the Ft. Stanton.

Types of Issues Anticipated

1. Allocation of the grazing privileges under Section 15 of the Taylor Grazing Act.

2. Impacts of livestock grazing to riparian areas and to threatened and endangered species.

Planning Criteria to Guide Development of the Planning Action

The following planning criteria were identified to help guide the resolution of the issues.

1. The proposed action must comply with laws, executive orders and regulations.

2. Evaluate and consider long term benefits to the public in relation to short term benefits.

3. In each planned action, resource outputs must be reasonable and achievable.

4. Planned actions will sustain the productivity and diversity of natural systems.

5. The BLM will use an interdisciplinary approach to land management.

6. Planned actions will contribute to or sustain the health of the land. Monitoring will be used to assess the effect of the management actions.

As new information becomes available during the planning process or through public participation, additional criteria may be developed for future guidance of this planning effort.

Disciplines to be Represented on the Interdisciplinary Team: The planning amendment/environmental assessment will be prepared by an interdisciplinary team consisting of a wildlife biologist, rangeland management specialist, recreational planner, surface protection specialist, and an environmental coordinator.

Kind and Extent of Public Participation Activities to be Provided

A press release will be sent to the local newspapers informing the public in the area of the proposed planning action.

Location and Availability of Documents Relevant to the Planning Process

Pertinent information is available at the BLM Roswell Resource Area Office in the Federal Building at 5th and Richardson, Roswell, NM 88202 and is subject to public review on weekdays from 7:45 a.m. to 4:30 p.m.

Dated: May 4, 1995.

**Michael L. Menge,**

*Acting District Manager.*

[FR Doc. 95–11476 Filed 5–9–95; 8:45 am]

BILLING CODE 4310–FB–M

[NM–931–05–1210–00–P (605)]

## Establishment of Visitor Restrictions for Designated Recreation Sites, Special Recreation Management Areas, and Other Public Land in the Roswell District, New Mexico

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notices of Establishment of Visitor Restrictions for Designated Recreation Sites, Special Recreation Management Areas and Other Public Lands in the Roswell District, New Mexico.

**SUMMARY:** The Roswell District, Bureau of Land Management (BLM), hereby establishes visitor restrictions for use of those public lands within the Roswell District, New Mexico. These visitor restrictions are necessary for the management of actions, activities and use of public lands, including those which are acquired or conveyed to the BLM.

**EFFECTIVE DATE:** May 10, 1995.

**ADDRESSES:** Any suggestions or inquiries should be addressed to the District Manager, Roswell District Office, 1717 West 2nd, Roswell, New Mexico 88201, Telephone: (505) 627–0272, during normal business hours (7:45 a.m. to 4:30 p.m., MST) at the above address.

**FOR FURTHER INFORMATION CONTACT:** Paul Happel, Natural Resource Specialist, BLM, Roswell District Office, 1717 West 2nd Rosewell, New Mexico 88201, Telephone: (505) 627–0203.

**SPECIFIC COMMENTS:** A proposed ''establishment of visitor restrictions for designated recreation sites, special recreation management areas, and other public lands in the Roswell District, New Mexico'' was published in the **Federal Register** on January 24, 1995, (60 FR No. 15) and provided for a 30-day public comment period that ended February 23, 1995. One letter was received from Gun Owners of America, which contained numerous specific comments. One of the comments urged the BLM to extend the public comment period to 60 days. The BLM Roswell District believes that a 30-day public comment period was adequate for this notice. Another comment stated that the rule as it is related to firearms is vague and will infringe upon Second Amendment rights of law abiding citizens. The BLM Roswell District believes the notice adequately describes firearms under the definition of a weapon. Another comment stated the rule would unduly interfere with the right of self defense. The BLM Roswell District believes that under state law,

self defense of one's life would not preclude a person from protecting themselves. Another comment stated the rule would require someone to get a written permit (in advance) in order to discharge a firearm within ½ mile of a developed recreation site. Based on this comment, the BLM Roswell District has changed the wording on the visitor restriction of discharge of firearms from ½ mile to 150 yards. This change corresponds with State law and other Federal agencies proving for public safety. Another comment stated the regulation does not contain a clear definition of what a developed recreation site and area is. The BLM Roswell District believes that a ''developed recreation site and area'' has been adequately described in the Definitions and in the proposed **Federal Register** notice. The definition is also described in the Code of Federal Regulations 43 CFR 8360.0–5 (C). Another comment recommended that the regulation be redrafted and tightened to focus on conduct which poses a danger. It goes on to state that the rule would restrict the discharge of firearms in recreation areas. The BLM under Rules of Conduct of Federal Regulations 43 CFR 8365.2–5 (A)., states on developed recreation sites and areas, unless otherwise authorized, ''No person shall: (a) Discharge or use firearms, other weapons or fireworks''. Another comment objected to the breadth of the conditions under which use of a firearm is banned, such as long guns being broken down or other-wise rendered inoperable and should be stored out-of-site. The BLM Roswell District has shortened the wording to read: ''Using weapons in violation of State laws within developed campsites or picnic areas''. Another comment stated that the commentator is concerned that if an individual uses a firearm while being attacked they would be arrested. The BLM Roswell District believes that self protection of one's life is established by State laws and that this restriction would not preclude a person from protecting his/her life.

**SUMMARY:** The proposed restrictions are necessary for the management of actions, activities, and use on public lands, including those which are acquired or conveyed to the BLM. The making of Rules of Conduct is provided for under Title 43 CFR Subpart 8365. These proposed regulations establish rules of conduct for the protection of persons, property, and public land resources. As a visitor to public lands, the user is required to follow certain restrictions designed to protect the lands and the natural environment, to ensure the health and safety of visitors, and to promote a pleasant and rewarding outdoor experience. This notice supersedes previous notices published in the **Federal Register** on January 22, 1991, (Vol. 56, No. 14), and correction to Supplementary Rules No. 2., dated February 1, 1991, Vol. 56, No. 28, establishing Supplementary Rules for Designated Recreation Sites; Special Recreation Management Areas and Other Public Lands in New Mexico. More specifically, the purpose falls into the following categories:

- Implementation of Management Plans—Certain prohibited activities have been recommended as Restrictions for designated recreation sites and Special Recreation Management Areas (SRMA's). In order to implement these recommendations, they must be published as specific prohibited acts in the **Federal Register**. Use of Rules of Conduct Section of 43 CFR, Subpart 8365, is the most appropriate way of implementation. Rationale for these recommendations is presented in its entirety in the Carlsbad Resource Management Plan, the Roswell Management Framework Plan or Recreation Management Plan for the specific areas.
- Mitigation of User Conflict—Certain other visitor restrictions are recommended because of specific user conflict problems. Prohibiting the reservation of camping space in developed campgrounds will allow such space to be available on a first-come-first-served basis. This will prevent people from monopolizing the use of limited developed camping space. Prohibition of motorized vehicle free-play (operation of any 2-, 3-, or 4-wheel motor vehicle for purposes other than accessing a campsite) is recommended to minimize the noise and nuisance factors that such activities represent in developed recreation sites.
- Public Health and Safety—The erection and maintenance of unauthorized toilet facilities or other containers for human waste on the public land could represent a major threat to public safety and health. Toilet structures may be permitted by the authorized officer on a case-by-case basis and only when appropriate State and local permits have been obtained. It should be noted that shooting restrictions recommended do not prohibit legitimate hunting activities except within 150 yards of developed sites. Recreational shooters will be encouraged to use public land where such shooting restrictions do not apply and this use does not significantly conflict with other uses.
- Complementary Rules—Some restrictions, such as parking or camping near water sources, are recommended to compliment those of State and local agencies. Because these restrictions provide for the protection of persons and resources in the interest and spirit of cooperation with the responsible agencies, these restrictions are deemed necessary.

**DEFINITIONS:** As used in these visitor restrictions, the term:

—*SRMA* means an area where special or more intensive types of resource and user management are needed.

—*A developed recreation site and area* means sites and areas that contain structures or capital improvements primarily used for recreation purposes by the public. Development may vary from limited development for protection of the resources and the safety of users to a distinctly defined site in which developed facilities that meet the Land and Water Conservation Funds Act of 1965 (as amended) criteria for a fee collection site are provided for concentrated public recreation use.

—*Public lands* means any lands, interest in lands, or related waters owned by the United States and administered by the BLM. Related waters are waters which lie directly over or adjacent to public lands and which require management to protect federally administered resources or to provide for enhanced visitor safety and other recreation experiences.

—*Camping* means the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or the parking of a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy. Occupying a developed camp site or an approved location within developed recreation areas and sites during the established night period of 10:00 p.m. to 6:00 a.m. will be considered overnight camping for fee collection and enforcement purposes.

—*Campfire* means a controlled fire occurring outdoors for cooking, branding, personal warmth, lighting, ceremonial, or aesthetic purposes.

—*Abandonment* means the voluntary relinquishment of control of property for longer than a period specified with no intent to retain possession.

—*Administrative activities* means those activities conducted under the authority of the BLM for the purpose of safeguarding persons or property, implementing management plans and policies developed in accordance and consistent with regulations or repairing or maintaining facilities.

—*Pet* means a dog, cat, or any domesticated companion animal.

—*Occupancy* means the taking or holding possession of a camp site, other location, or residence on public land.

—*Vehicle* means any motorized or mechanized device, including bicycles, hang gliders, ultra lights, and hot air balloons which is propelled or pulled by any living or other energy source, and capable of travel by any means over ground, water, or air.

—*Authorized Officer* means any employee of the BLM who has been delegated the authority to perform under Title 43.

—*Stove fire* means a fire built inside an enclosed stove or grill, a portable brazier, or a pressurized liquid or gas stove, including space-heating devices.

—*Weapon* means a firearm, compressed gas or spring-powered pistol or rifle, bow and arrow, crossbow, blowgun, spearguns, slingshot, irritant gas device, explosive device, or any other implement designed to discharge missiles or projectiles; hand-thrown spear, edged weapons, nun-chucks, clubs, billy-clubs, and any device modified for use or designed for use as a striking instrument; includes any weapon the possession of which is prohibited under New Mexico law.

—*Historic or prehistoric structure or ruin site* means any location at least 50 years old which meets the standards for inclusion on the National Register of Historic Places as defined in 36 CFR 60.4, without regard to whether the site has been nominated or accepted.

Vistor Restrictions—ALL PUBLIC LANDS: In addition to regulations contained in 43 CFR 8365.1, the following visitor restrictions apply to all public lands, including those lands acquired or conveyed to the BLM, and related waters. The following are prohibited unless authorized by written permit:

*Sanitation*

- To construct or maintain any pit toilet facility.
- The dumping or disposal of sewage or sewage treatment chemicals from self-contained or containerized toilets, except at facilities provided for that purpose.
- To shower or bathe at any improved or developed water source, outdoor hydrant pump, faucet or fountain, or restroom water faucet unless such water source is designated for that purpose.

*Occupany and Use*

- To camp or occupy any site on public lands or any approved location, including those in developed recreation areas and sites or SRMA's, for a period longer than 14 days within any period of 28 consecutive days. Exceptions, which will be posted, include areas closed to camping and areas or sites with other designated camping stay limits. The 28-day period begins when a camper initially occupies a specific location on public land. The 14-day limit may be reached either through a number of separate visits or through 14 days of continuous occupation. After the 14th day of occupation, campers must move beyond a 25-mile radius from the previous location. When a camping limit has been reached, use of any public land site within the 25-mile radius shall not occur again until at least 30 days have elapsed from the last day of authorized use.
- To park any motor vehicle for longer than 30 minutes, or camping within 300 yards of any spring, man-made water hole, water well, or watering tank used by wildlife or domestic stock.
- To dispose of any burning or smoldering material except as sites or facilities provided for that purpose.
- Unauthorized cutting, removing, or transporting woody materials including, but not limited to:

1. Any type of variety of vegetation (excluding dead and downed),
2. Fuelwood or firewood, either green or standing deadwood or,
3. Live plants (except for consumption, medicinal purposes, study or personal collection).

- Removing or transporting any mineral resources including, but not limited to, rock, sand, gravel, and minerals on or from public lands without written consent, proof of purchase, or a valid permit. Collection of specimens and samples in reasonable amounts for personal noncommercial use, under 43 CFR 8365.1–5(b) is not affected by this section.
- Collection or removal of any natural resource, including wood for campfires, where such restrictions are posted.
- Failure to prevent a pet from harassing, molesting, injuring, or killing humans, wildlife or livestock.
- Violation of the terms, stipulations, or conditions of any permit or use authorization.
- Failure to show a permit or use authorization to any BLM employee upon request.
- Camp or occupy or build any fire on, or in, any historic or prehistoric structure or ruin site.
- Competitive or commercial operations or events without a Special Recreation Permit.

*Vehicles*

- Operation of an off-road vehicle without full-time use of an approved spark arrester and muffler.
- Failure or display the required State off-road vehicle registration.
- Lubricating or repairing any vehicle, except repairs necessitated by emergency.
- Operate, park, or leave a motorized vehicle in violation of posted restrictions or in such a manner or location as to:

1. Create a safety hazard,
2. Interfere with other authorized users or uses,
3. Obstruct or impede normal or emergency traffic movement,
4. Interfere with or impede administrative activities,
5. Interfere with the parking of other vehicles, or
6. Endanger property or any person.

*Public Health and Safety*

- Possession or use of fireworks.
- Leaving a campfire unattended, or failing to completely extinguish a fire after use.
- The sale or gift of an alcoholic beverage to a person under 21 years of age.
- The possession of an alcoholic beverage by a person under 21 years of age.
- Ignite or burn any material containing or producing toxic or hazardous material.
- Carrying of concealed weapons.

*State and Local Laws*

- Failure to comply with all applicable State of New Mexico regulations for boating safety, equipment, and registration.

Visitor Restrictions—DEVELOPED RECREATION SITES/AREAS AND SPECIAL RECREATION MANAGEMENT AREAS: In addition to the regulations contained in 43 CFR 8356.1, 8365.2 and those listed above, the following visitor restrictions will be applied in accordance with 43 CFR 8365.2: The following activities are prohibited unless authorized by written permit:

- Failure to immediately remove and dispose of in a sanitary manner, all pet fecal material, trash, garbage or waste created.
- Failing to physically restrain a pet at all times within developed campsite and picnic areas. Pets are prohibited from entering caves all designated nature or interpretive trails where

posted. Animals trained to assist handicapped persons are exempt from this rule.

- Reserving camping space, except at group facilities. Camping space is available on a first-come-first-served basis.
- Failure to maintain quiet between the hours of 10:00 p.m. to 6:00 a.m. or other hours posted. During this period no person shall create noise which disturbs other visitors.
- More than two motorized vehicles and/or 10 individuals at any one approved site not designated for group use or parking area. Groups exceeding these limits must use a group site or additional designated sites.
- Vehicles off of existing or designated roads and trails unless facilities have been specifically provided for such use. Motorized vehicles will be operated for access to and from developed facilities only.
- To park in or occupy a parking space posted or marked for handicapped use without displaying an official identification tag or plate.
- Posting or distribution of any signs, posters, printed material, or commercial advertisements.
- The discharge of firearms or other weapons, hunting and trapping within 150 yards of developed recreation sites and areas.
- Using weapons in violation of State law within developed campsites or picnic areas.
- Disposing of any waste or grey water except where facilities are provided.
- Bringing equine stock, llama, cattle, or other livestock within campgrounds or picnic areas unless facilities have been specifically provided for such use.
- Gathering or collecting woody plants or any other natural resource, minerals, cultural, or historical artifacts that require permits.
- Cutting or gathering of green trees or their parts or removal of down or standing dead wood for any purpose.
- Not adhering to fire danger ratings issued by government.
- Entering the following caves from October 15 to March 31 of each year: Fort Stanton, Torgac, Torgac Annex, Crockett, Crystal, Big-Eared Cave, Bat Hole, Malpais Madness, Tres Ninoc and Feather. Only personnel engaged in authorized scientific bat studies, census, monitoring, and emergencies will be allowed to enter caves during this time, due to bat hibernation.
- Entering a cave without each person wearing a safety helmet (hard hat) with chin strap and at least three sources of light.
- Annoying or disturbing bats at any time.

List of Developed Recreation Sites/Areas and Special Recreation Management Areas:

1. Valley of Fires Recreation Area (Roswell Resource Area)
   T. 7 S., R. 10 E.,
   sec. 29, 30.
2. Fort Stanton (Roswell Resource Area)
   T. 9, 10 S., 14, 15 E.
3. Mescalero Sands North Dune SMRA (Roswell Resource Area)
   T. 10 S., R 30 E.,
   sec. 34, 35.
4. Cave SRMA's—McKittrick Hill, Lost, Fence Canyon, Manhold, Yellowjacket/Lair, Chosa Draw, Mudgetts, Honest Injun, KFF Caverns, Fort Stanton Cave, Torgac Cave, and Crockett's Cave
5. Dark Canyon SRMA (Carlsbad Resource Area)
   T. 24 S., R. 23, 24 E.
6. Lonesome Ridge SRMA (Carlsbad Resource Area)
   T. 26 S., R. 22 E.,
   sec. 19–21, 29–31.
7. Pecos River Canyon Complex (Carlsbad Resource Area)
   T. 24, 25 S., R. 29, 30 E.
8. Guadalupe Escarpment Scenic Area (Carlsbad Resource Area)
   T. 23–26 S., R. 22–26 E.
9. Alkali Lake Off-road Vehicle Area (Carlsbad Resource Area)
   T. 21 S., R. 27 E.,
   sec. 4, 5, 9.
10. Hackberry Lake Off-road Vehicle Area (Carlsbad Resource Area)
    T. 18–20 S., R. 30, 31 E.11. Pecos River Corridor (Carlsbad Resource Area)
    T. 22 S., R. 27 E., river section to
    T. 26 S., R. 29 E.
12. Chosa Draw SRMA (Carlsbad Resource Area)
    T. 25 S., R. 25 E.,
    sec. 20–22, 27–29, 33.
13. Overflow Wetlands (Roswell Resource Area)
    T. 11, 12 S., R. 25, 26 E.

**SUPPLEMENTARY INFORMATION:** The Roswell District Manager is establishing these visitor restrictions, which are necessary for the protection of persons, property, and public lands and resources currently under the Bureau's administration within the Roswell District, New Mexico and those lands acquired for inclusion within the administrative jurisdiction of the BLM as provided for in 43 CFR 8365.1–6. These Visitor Restrictions apply to all persons using public lands. Violations of these restrictions are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Exceptions to the following visitor restrictions may be permitted by the authorized officer subject to limits and restrictions of controlling Federal and State law. Persons granted use exemptions must possess written authorization from the BLM Office having jurisdiction over the area. Users must further comply with the zoning, permitting, rules, or regulatory requirements of other agencies, where applicable.

Dated: May 4, 1995.

**Michael L. Menge,**

*Acting District Manager.*

[FR Doc. 95–11475 Filed 5–9–95; 8:45 am]

BILLING CODE 4310–FB–M]

---

**[ID–942–7130–00–7693]**

## Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., May 1, 1995.

The plat representing the dependent resurvey of a portion of the subdivision of section 23 and the survey lot 2, T. 5 S., R. 34 E., Boise Meridian, Idaho, Group No. 922, was accepted, May 1, 1995.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs, Fort Hall Agency to identify certain Indian Allotment boundaries and to support its land sale program.

All inquiries concerning the survey of the above described land must be sent to Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: May 1, 1995.

**Duane E. Olsen,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 95–11454 Filed 5–9–95; 8:45 am]

BILLING CODE 4310–GG–M

---

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 29, 1995. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 25, 1995.

**Jan Townsend,**

*Acting Chief of Registration, National Register.*

**ARKANSAS**

**Baxter County**

*Baxter County Courthouse,* Courthouse Sq., Mountain Home, 95000658

**Crawford County**

*Cedar Creek Bridge (Historic Bridges of Arkansas MPS),* AR 348 over Cedar Cr., Rudy vicinity, 95000649

*Crawford County Road 320 Bridge (Historic Bridges of Arkansas MPS),* Co. Rd. 32D over Cove Cr., Natural Dam vicinity, 95000650

*Frog Bayou Bridge (Historic Bridges of Arkansas MPS),* AR 282 over Frog Bayou, Mountainburg vicinity, 95000648

**Hot Spring County**

*Alderson—Coston House,* 204 Pine Bluff St., Malvern, 95000657

**Logan County**

*Cove Creek Bridge (Historic Bridges of Arkansas MPS),* AR 309 over Cove Cr., Corley vicinity, 95000645

*Cove Creek Tributary Bridge (Historic Bridges of Arkansas MPS),* AR 309 over tributary of Cove Cr., Corley vicinity, 95000644

*Petit John River Bridge (Historic Bridges of Arkansas MPS),* AR 109 over Petit Jean R., Sugar Grove vicinity, 95000646

**Newton County**

*Little Buffalo River Bridge (Historic Bridges of Arkansas MPS),* AR 327 over Little Buffalo R., Parthenon vicinity, 95000647

**Perry County**

*Fourche LaFave River Bridge (Historic Bridges of Arkansas MPS),* AR 7 over Fourche LaFave R., Nimrod vicinity, 95000643

**Pulaski County**

*Pulaski County Road 67D Bridge (Historic Bridges of Arkansas MPS),* Co. Rd. 67D over Bridge Cr., Jacksonville, 95000651

*Pulaski County Road 71D Bridge (Historic Bridges of Arkansas MPS),* Co. Rd. 71D over Bayou Meto. Jacksonville, 95000652

**Saline County**

*North Fork Saline River Bridge (Historic Bridges of Arkansas MPS),* AR 9 over the Saline R., Paron vicinity, 95000642

**Washington County**

*Lafayette Street Overpass (Historic Bridges of Arkansas MPS),* Lafayette St. over the Frisco RR tracks, Fayetteville, 95000653

*Maple Street Overpass (Historic Bridges of Arkansas MPS),* Maple St. over the Frisco RR tracks, Fayetteville, 95000654

**KENTUCKY**

**Caldwell County**

*Powell, William S., House,* 501 Washington St., Princeton, 95000641

**Campbell County**

*York Street Historic District,* York St. from Seventh St. to Tenth St., Newport, 95000640

**MASSACHUSETTS**

**Middlesex County**

*Belvidere Hill Historic District,* Fairview, Talbot and Summit Sts. and parts of Nesmith, Mansur and Fairmount Sts. and Belmont Ave., Lowell, 95000656

*Trinity Episcopal Church,* 131 W. Emerson St., Melrose, 95000660

*Wilder Street Historic District,* 284—360 Wiler St., Lowell, 95000662

**MONTANA**

**Silver Bow County**

*Socialist Hall,* 1957 Harrison Ave., Butte, 95000661

**NORTH CAROLINA**

**Harnett County**

*Williams Grove School,* E. Depot St., N side, between Hickory and Willow Sts., Angier, 95000659

**Iredell County**

*South Race Street Historic District,* Roughly bounded by S. Race St., Western Ave., W. Armfield St., W. Bell St., W. Sharpe St. and S. Oak St., Statesville, 95000635

**McDowell County**

*Lone Beech,* 206 Hillcrest Dr., Marion, 95000639

**OHIO**

**Cuyahoga County**

*Chagrin Falls Triangle Park Commercial District (Boundary Increase),* Jct. of N. Main and E. Orange Sts., extending E and S, Chagrin Falls, 95000634

**SOUTH CAROLINA**

**Florence County**

*Askins, W. T., House,* 178 S. Acline Ave., Lake City, 95000636

**Laurens County**

*Charlton Hall Plantation House,* SC 101, approximately 2.5 mi. S of Hickory Tavern, Hickory Tavern vicinity, 95000633

**Richland County**

*World War Memorial Building,* 920 Sumter St., at jct. with Pendleton St., Columbia, 95000637

**Spartanburg County**

*Bivings—Converse House,* 1 Douglas St., Glendale vicinity, 95000638

**WASHINGTON**

**Chelan County**

*Columbia River Bridge at Wenatchee (Bridges of Washington State MPS),* US 2 over the Columbia R., Wenatchee vicinity, 95000623

**Douglas County**

*Columbia River Bridge at Bridgeport (Bridges of Washington State MPS),* WA 17 over the Columbia R., Bridgeport vicinity, 95000632

**King County**

*Patton Bridge (Bridges of Washington State MPS),* Green Valley Rd. over the Green R., Auburn vicinity, 95000626

**Kitsap County**

*Agate Pass Bridge (Bridges of Washington State MPS),* WA 305 over Agate Passage, Suquamish vicinity, 95000625

**Kittitas County**

*Lake Keechelus Snowshed Bridge (Bridges of Washington State MPS),* I–90 near Snoqualmie Pass, Hyak vicinity, 95000627

**Lincoln County**

*Spokane River Bridge at Long Lake Dam (Bridges of Washington State MPS),* WA 231 over the Spokane R., Rearden vicinity, 95000628

**Spokane County**

*Marshall Bridge (Bridges of Washington State MPS),* Cheney—Spokane Rd. over the SP & S RR tracks, Marshall vicinity, 95000631

**Stevens County**

*Columbia River Bridge at Northport (Bridges of Washington State MPS),* WA 25 over the Columbia R., Northport vicinity, 95000624

**Yakima County**

*Donald—Wapato Bridge (Bridges of Washington State MPS),* Donald Rd. over the Yakima R., Wapato vicinity, 95000629

*Toppenish—Zillah Bridge (Bridges of Washington State MPS),* Over the Yakima R., between Toppenish and Zillah, Toppenish vicinity, 95000630

In order to assist in the preservation of the following property, the commenting period is being shortened to 2 days:

**ARKANSAS**

**Garland County**

*Clinton, Bill, Boyhood Home,* 1011 Park Ave., Hot Springs, 95000655

A proposed move is being considered for the following property:

**KANSAS**

**Sedgwick County**

*Calvary Baptist Church,* 601 N. Water, Wichita, 88001905

[FR Doc. 95–11426 Filed 5–9–95; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (USAID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35). Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records

Management Officer, Renee Poehls, (202) 736–4743, M/AS/ISS Room 930B, N.S., Washington, D.C. 20523.
*Date Submitted:* April 11, 1995
*Submitting Agency:* U.S. Agency for International Development
*OMB Number:* OMB 0412–0546
*Form Number:* AID 1550–12
*Type of Submission:* Renewal
*Title:* Request for shipment of commodities for Foreign Distribution (Foreign Government)
*Purpose:* An USAID Title III form is needed by which the specific needs of the recipient country can be communicated to U.S. Department of Agriculture by USAID. The form will be used to request food commodities for approved P.L. 480 Title III country programs overseas and to furnish procurement instruction and other pertinent information necessary to ship these commodities to destination ports.
*Annual Reporting Burden:*
Respondents: 13
Annual responses: 55
Annual burden hours: 60
*Reviewer:* Jeffery Hill (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

Dated: May 1, 1995.

**Genease E. Pettigrew,**

*Chief, Information Support Services Division Office of Administrative Service Bureau of Management.*

[FR Doc. 95–11523 Filed 5–9–95; 8:45 am]

BILLING CODE 6116–01–M

## Public Information Collection Requirements Submitted to OMB for Review

The U.S. Agency for International Development (USAID) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, (44 U.S.C. Chapter 35). Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 736–4743, M/AS/ISS Room 930B, N.S., Washington, D.C. 20523.

*Date Submitted:* April 11, 1995
*Submitting Agency:* U.S. Agency for International Development
*OMB Number:* OMB 0412–0545
*Form Number:* AID 1550–04
*Type of Submission:* Renewal
*Title:* Request for shipment of commodities for Foreign Distribution (Foreign Government)
*Purpose:* Public Law 480 states that the President may utilize nonprofit voluntary agencies (PVOs) registered with and approved by the USAID in furnishing food commodities to needy persons outside the Untied States. The USAID Form No. 1550–4 is an instrument by which the PVOs communicate their specific needs in this regard to the U.S. Government. This form is used by eligible PVOs to request food commodities for approved country programs overseas and to furnish delivery instructions and other information necessary to ship these commodities to destination ports.
*Annual Reporting Burden:*
Respondents: 19,
Annual responses: 1,311;
Annual burden hours: 120 (est.)
*Reviewer:* Jeffery Hill (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503

Dated: May 1, 1995.

**Genease E. Pettigrew,**

*Chief, Information Support Services Division, Office of Administrative Service, Bureau of Management.*

[FR Doc. 95–11524 Filed 5–9–95; 8:45 am]

BILLING CODE 6116–01–M

## INTERNATIONAL TRADE COMMISSION

## International Trade Commission, Investigations Relating to Potential Breaches of Administrative Protective Orders, Sanctions Imposed for Actual Violations

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Summary of Commission practice relating to administrative protective orders.

**SUMMARY:** This notice provides a summary by the International Trade Commission (Commission) of its investigations of (1) breaches of administrative protective orders (APOs) issued in connection with investigations under Title VII and Section 337 of the Tariff Act of 1930, and (2) certain violations of the Commission's rules.

This notice is intended to inform the public of the Commission's experience with APO breaches. The Commission also intends that this notice will educate and alert representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission. This notice is illustrative only and does not limit the Commission's rules or standard APO. The notice does not provide an exclusive list of conduct that will be deemed to be a breach of the Commission's APOs, and does not indicate how the Commission will rule in future cases.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3113.

**SUPPLEMENTARY INFORMATION:** The discussion below illustrates APO breach investigations that the Commission has completed including a description of actions taken in response to breaches. The discussion covers breach investigations completed during 1994 with respect to antidumping and countervailing duty cases. Also discussed are the Commission's investigations completed during 1994 of possible violations of Commission rule 207.3, commonly known as the ''one day rule.'' In the interest of providing as much information to practitioners as possible on APO practice, this notice also discusses breach investigations completed during 1994 with respect to investigations under section 337 of the Tariff Act of 1930.

The Commission periodically reports a summary of its actions in response to violations of Commission APOs in an effort to educate those obtaining access to business proprietary information (BPI) under an APO of the common problems encountered in handling BPI and confidential business information (CBI). This is the fifth notice of its kind, the previous ones having been published at 56 FR 4846 (Feb. 6, 1991), 57 FR 12335 (Apr. 9, 1992), 58 FR 21991 (Apr. 26, 1993), and 59 FR 16834 (Apr. 8, 1994). The Commission intends to publish summaries at least annually, and more frequently as appropriate.

As part of the effort to educate practitioners about APO practice, the Commission's Secretary issued in September 1991 An Introduction to Administrative Protective Order Practice in Antidumping and Countervailing Duty Investigations. This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

### I. Title VII Administrative Protective Orders

*A. In General*

APOs are issued in Commission investigations under Title VII of the Tariff Act of 1930 to provide access to BPI to certain party representatives under conditions designed to protect the confidentiality of such information. The

Commission is required to disclose under APO to the authorized representatives of interested parties who are parties to an investigation BPI collected by the Commission in the course of such investigations. 19 U.S.C. 1677f. The Commission has implemented procedures governing this disclosure, which is accomplished under an APO issued by the Secretary to the Commission. 19 CFR 207.7. An important provision of the Commission's rules relating to APOs is the ''one day rule'' that provides parties with an extra day in which to file the public version of certain submissions containing BPI. 19 CFR 207.3. The one day rule, which also permits correction of the bracketing of BPI during that extra day, was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule.

The Commission Secretary provides BPI only to ''authorized applicants'' who agree to be bound by the terms and conditions of an APO. The Commission is currently revising its standard APO forms for antidumping and countervailing duty investigations to reflect recent regulatory changes and Commission practice. The Commission has also created a new APO form for use in section 201 investigations. The standard APO form for antidumping and countervailing duty investigations issued by the Commission in 1994 required the applicant to swear that he or she would:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under the APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision-making for an interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under the APO without first having received the written consent of the Secretary and the party or the attorney of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under the APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under the APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provisions of the APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions as the Commission deems appropriate, including the administrative sanctions set out in the APO.

The APO further provides that breach of the protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association; and

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, and denial of further access to business proprietary information in the current or any future investigations before the Commission. In addition, as noted in its December 28, 1994 Notice of Final Rulemaking (59 FR 66719, 66720–21), the Commission may take actions other than sanctions, such as the issuance of letters of warning.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through the APO procedure. Consequently, they are not subject to the APOs' requirements with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. See 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken; during 1994, such action was taken.

*B. Investigations of Alleged APO Breaches*

In an antidumping or countervailing duty investigation, the investigation of an alleged APO breach generally proceeds as follows. The Secretary, acting under delegated authority, issues to the alleged breacher a letter of inquiry to ascertain the alleged breacher's views on whether a breach has occurred. If, based on the response made to such a letter of inquiry, the Commission determines that a breach has occurred,

the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. However, in some cases, the Commission has determined that although a breach has occurred sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate, and has waived the rule requiring issuance of the second letter. The Commission's December 28, 1994 Notice of Final Rulemaking formally codifies this procedure. See 59 FR 66719, 66721. The Commission retains sole authority to make final determinations regarding the existence of a breach and the appropriate action to be taken if a breach has occurred.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. Section 135(b) of the Customs and Trade Act of 1990, 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or of transmission of proprietary versions of documents to unauthorized recipients. Other breaches have involved: the failure to properly bracket BPI in proprietary documents filed with the Commission; the failure to immediately report known violations of an APO; and the failure to adequately supervise non-legal personnel in the handling of BPI in certain circumstances.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI in the Commission as a reliable protector of BPI, and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as whether the breach was unintentional, lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, the promptness with which the breaching party reported the violation to the Commission, and any relevant circumstances peculiar to the situation. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI.

The Commission notes that Commission rules permit economists or consultants to obtain access to BPI under the APO under the direction and control of an attorney under the APO, or upon their own responsibility, if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. See 19 C.F.R. 207.7(a)(3) (B) and (C). The Commission cautions that economists or consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

*C. Specific Investigations in Which Breaches Were Found*

The following case studies are presented to educate users about the types of APO breaches found by the Commission and the sanctions imposed and other actions taken by the Commission. In addition, the case studies discuss the factors considered by the Commission as mitigating the sanctions imposed in particular instances. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

The following discussion covers the 8 instances in which breaches of APOs in antidumping and countervailing duty investigations were found in 1994:

Case 1: An attorney (1) failed to redact BPI in the public version of a brief, and (2) subsequently served that version on persons not subject to the APO. The public version of the brief filed with the Commission was placed in the public file and was signed out and reviewed by a person not subject to the APO. The failure to redact the BPI from the brief was not discovered by the attorney but was found by the Secretary to the Commission. After being notified, counsel retrieved copies of the document containing the confidential information and sent replacement pages to the Commission. The Commission found that the attorney had breached the APO, but that mitigating circumstances existed because the attorney had committed no prior breaches and the breaches were unintentional. The attorney was given a private letter of reprimand.

Case 2: An attorney failed to redact BPI in the public version of a brief. The Commission was informed of the incident the next day and the attorney filed corrected pages of the brief with the Commission. The public version of the brief was immediately removed from the Commission files. No one other than the Commission staff had seen the public version. The defective public version of the brief was only sent to the attorneys subject to the APO and was recovered without being disseminated to anyone not subject to the protective order. The Commission found that the attorney had breached the APO, but did not sanction the attorney because of the following mitigating circumstances: the breach was not intentional; the attorney had committed no prior breaches; when notified of the defective brief the attorney promptly retrieved the defective documents so no BPI was actually released to any unauthorized persons; and the firm immediately revised and strengthened its previously established procedures for safeguarding against the unintentional release of BPI. Two colleagues were found not to have breached, because they were not directly involved in the preparation of the public version of the brief. The breaching attorney received a warning letter.

Case 3: An attorney filed with the Commission and served upon parties a copy of the public version of a brief in which certain bracketed BPI was not deleted and other BPI was neither bracketed nor deleted. The public version of the brief filed with the Commission was placed in the public file and was signed out and reviewed by persons not subject to the APO. The failure to redact the BPI from the brief was brought to the attorney's attention

by the Secretary of the Commission. The Commission found that a breach of the APO had occurred, but that mitigating circumstances existed because the breaches were unintentional, the attorney had not previously been charged by the Commission with an APO violation, and the attorney acted promptly to mitigate the breach when notified by the Commission that the breach had occurred. However, aggravating circumstances included the fact that members of the public actually reviewed the improperly redacted documents on several occasions, the breach was not discovered by the attorney or by the attorney's firm, but by the Commission, and the attorney appeared not to have reviewed the work of a paralegal who created the public version of the brief. With respect to this last item, we note that the Commission has no specific requirement that attorneys review the work of paralegals, but attorneys are held responsible for APO breaches by their staff who are APO signatories. The attorney was given a private letter of reprimand.

Case 4: An attorney served the public version of a brief on persons on the public service list and filed it with the Commission. However, BPI was contained in an appendix to the brief. The public version of the brief was not placed in the Commission's public files and the copies of the brief that were served on attorneys on the public service list were destroyed before dissemination to the attorneys' clients. The Commission found that a breach had occurred, but mitigating circumstances were found in that the attorney had committed no prior APO violation, the attorney took immediate steps to ''cure'' the breach by seeking the removal of the brief from the Commission's public file before it could be reviewed by members of the public (although the brief had not yet been placed in the public file), and the attorney notified other counsel participating in the investigations of the problem before they released the information to their clients. The breaching attorney was not sanctioned but received a warning letter.

Case 5: An attorney filed the public version of a brief in which bracketed BPI was not redacted. The brief was filed with the Commission and served on persons on the public service list, several of whom were not signatories to the APO. The attorney learned of the error that same day and immediately retrieved all copies of the defective public version of the brief from the parties on whom it had been served. The brief was retrieved before it was viewed by any non-signatories to the APO. The brief was never placed in the Commission's public file. The Commission found that the attorney had breached the APO, but decided not to sanction the attorney because of mitigating circumstances including that the breach was inadvertent, the attorney had never been sanctioned by the Commission in the past for APO breaches, immediate steps were taken to mitigate any harm arising from the breach, and no non-APO signatories viewed the confidential information. The breaching attorney received a warning letter. Three colleagues were found not to have breached the APO because they did not participate in the preparation of the public version of the brief.

Case 6: A paralegal assigned to remove bracketed BPI from the public version of a brief failed to do so, and the brief was submitted to the Commission, and served on a signatory to the APO. The error was discovered and reported to the Commission before the brief was placed in the public file. The Commission found that two attorneys responsible for supervising the paralegal breached the APO, but that there were mitigating circumstances including the facts the breach was inadvertent, none of the persons involved had been previously sanctioned by the Commission for APO breaches, steps were taken to mitigate any harm arising from the breach, and no BPI was disclosed. The attorneys were not sanctioned, but received warning letters. Two colleagues were found not to have breached the APO because they were not directly involved with the production of the document in question.

Case 7: Two attorneys served the business proprietary version of a brief on a non-APO signatory due to an error in the certificate of service. Two non-APO signatories actually viewed the defective brief before the attorneys could retrieve it. In a related incident, three attorneys also disclosed information in the public version of a brief from which BPI could be derived, but retrieved it before service was complete. That brief also was filed with the Commission's Secretary, but had not yet been placed in the public file when the attorneys reported the incident. The Commission found breaches in both incidents, but determined not to sanction the attorneys. Mitigating circumstances included the facts that the breaches were unintentional, none of the attorneys involved had been previously sanctioned by the Commission for an APO breach, the attorneys promptly reported both breaches to the Commission and took immediate action to mitigate the breaches, and no non-APO signatories viewed the brief in the second incident. The attorneys received warning letters.

Case 8: Two attorneys mistakenly served replacement pages containing BPI for the confidential version of a brief on an attorney at another law firm. Neither the law firm to which the APO material was sent, nor any of its attorneys, was included in the APO service list. The attorneys waited several days to inform the Commission of the breach. The Commission found that a breach had occurred, but that mitigating circumstances included the following: the breach was unintentional; the attorneys had no prior APO sanctions; prompt and effective measures were taken to minimize any harm resulting from the breach; and the firm conducted more training of its personnel and instituted new procedures to guard against future breaches. Aggravating circumstances included the fact that non-APO signatories of the law firm that received the misdirected copies viewed the information. The breaching attorneys received private letters of reprimand.

*D. Investigations Involving the ''One Day Rule''*

During 1994, the Commission completed the following investigations of changes to briefs that were not in compliance with the one day rule. The Commission found no violations in these investigations. The reasons for finding no violation include:

(1) Attorneys representing two parties in the same investigation made and submitted substantive corrections to their briefs along with bracketing corrections. The attorneys were found not to be in violation because a representative of the Commission had suggested that the corrections be made and there was a misunderstanding as to the appropriate means to make such changes; and

(2) An attorney submitted bracketing changes to a brief in one letter and correction of a typographical error in the brief in a separate letter. The Commission determined that because the correction was filed separately, and not along with the bracketing changes, there was no violation of the one day rule.

*E. Investigations in Which No Breach Was Found*

During 1994, the Commission completed 4 additional investigations in which no breach was found. The reasons for a finding of no breach included:

(1) The information allegedly mishandled was not BPI;

(2) Partially redacted BPI was largely illegible; and

(3) The information allegedly mishandled by the alleged breacher consisted entirely of information pertaining to the alleged breacher's own client.

## II. Section 337 Administrative Protective Orders

APOs are issued in section 337 investigations pursuant to the statute and the Commission's rules. 19 U.S.C. § 1337(n); 19 CFR 210.37. APO practice in section 337 investigations differs in important respects from APO practice in title VII investigations. Notably, in the section 337 context, it is the presiding Administrative Law Judge rather than the Secretary who issues the APO. The terms of the APO may differ from case to case. Further, the one day rule does not apply.

In a section 337 investigation that is no longer before the administrative law judge but is before the Commission, the investigation of an alleged APO breach generally proceeds in the following manner. The Secretary issues a letter of inquiry to ascertain the alleged breacher's views on whether a breach has occurred. If, based on the response made to such a letter of inquiry, the Commission determines that a breach has occurred, the Commission issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. The Commission retains sole authority to make final determinations regarding the existence of a breach and the appropriate action to be taken if a breach has occurred.

In section 337 investigations that are before the presiding Administrative Law Judge, it is the judge who presides over the inquiry into any alleged APO breaches.

Breaches have involved the unauthorized dissemination of CBI; the use of CBI for purposes other than the section 337 investigation; and the failure to return or destroy CBI in a timely manner. The following is a summary of the one case in which a breach of the APO in a section 337 investigation was found in 1994:

Case 9: An attorney failed to destroy CBI in a timely manner after the termination of the investigation and after the determination was no longer appealable. The Commission determined that the attorney had breached the APO after written and oral requests by the supplier for return of the information were denied. Mitigating circumstances included the facts that this was the first APO breach by the attorney, and that while the attorney failed to return or destroy the CBI, no CBI was disclosed. The attorney received a private letter of reprimand.

Issued: May 2, 1995.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–11492 Filed 5–9–95; 8:45 am]

BILLING CODE 7020–02–P

---

**[Investigation 332–362]**

## U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation and request for written submissions.

**EFFECTIVE DATE:** April 27, 1995.

**SUMMARY:** Following receipt on March 31, 1995, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–362, U.S.-Africa Trade Flows and Effects of the Uruguay Round Agreements and U.S. Trade and Development Policy. The USTR letter also requested that the Commission prepare its first annual report under this investigation not later than November 15, 1995, and provide an update of the report annually thereafter for a period of 4 years.

**FURTHER INFORMATION CONTACT:** Cathy Jabara, Office of Industries (202–205–3309) or Jean Harman, Office of Industries (292–205–3313), or William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects. The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

*Background:* The USTR, in his letter dated March 30, 1995, requested that the Commission, pursuant to section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g), conduct an investigation to provide the President a report containing the following:

1. A profile of the structure of U.S.-Africa trade flows over the 1990–94 period in the following major sectors: agriculture, forest products, textiles and apparel, energy, chemicals, minerals and metals, machinery and equipment, electronics technology, miscellaneous manufactures and services;

2. A summary of U.S. Government trade and development programs (e.g., investments, trade finance, trade facilitation, trade promotion, foreign development assistance, etc.) in Africa, including dollar amounts on an annual basis, during the 1990–94 period;

3. A summary of the literature and private sector views relevant to assessing the impact of the Uruguay Round Agreements on developing countries and Africa in particular; and

4. An assessment of any effects of the Uruguay Round Agreements, and of U.S. trade and development policy for Africa, on U.S.-Africa trade flows.

As requested by the USTR, the Commission will limit its study to the following countries in Sub-Saharan Africa: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Togo, Tanzania, Uganda, Zaire, Zambia, and Zimbabwe.

The USTR letter notes that section 134 of the Uruguay Round Agreements Act (URAA), P.L. 103–465, directs the President to develop a comprehensive trade and development policy for the countries of Africa. The President is also to report to the Congress annually over the next 5 years on the steps taken to carry out that mandate. The Statement of Administrative Action that was approved by the Congress with the URAA states that the President will direct the International Trade Commission to submit within 12 months following enactment of the URAA into law, and annually for the 4 years thereafter, a report providing (1) an analysis of U.S.-Africa trade flows, and (2) an assessment of any effects of the Uruguay Round Agreements, and of U.S. trade and development policy for Africa, on such trade flows.

The USTR letter states that as part of its trade and development policy for Africa, the Administration will be examining all measures that will foster economic development in Africa through increased trade and sustained economic reforms. The USTR asks the Commission in its report to provide, to the extent practicable, any readily available information on the role of regional integration in Africa's trade and development and on Africa's progress in implementing economic reforms.

*Public Hearing:* A public hearing in connection with the investigation will be held at the U.S. International Trade

Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on July 25, 1995. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., July 13, 1995. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., July 13, 1995; the deadline for filing post-hearing briefs or statements is 5:15 p.m., August 1, 1995.

In the event that, as of the close of business on July 13, 1995, no witnesses are scheduled to appear at the hearing, the hearing will be cancelled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–2000) after July 13, 1995, to determine whether the hearing will be held.

*Written Submissions:* In lieu of or in addition to participating in the hearing, 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 § 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 persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than August 1, 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.

Issued: May 5, 1995.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–11493 Filed 5–9–95; 8:45 am]

BILLING CODE 7020–02–P

---

**[Investigation No. 337–TA–373]**

## Certain Low-Power Computer Hard Disk Drive Systems and Products Containing Same; Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 4, 1995, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Conner Peripherals, Inc., 3081 Zanker Road, San Jose, California 95134–2128. A supplement to the complaint was filed on April 27, 1995. The complaint as supplemented alleges a violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain low-power computer hard disk drive systems and products containing same by reason of infringement of claims 1, 2, 7, 20–24, and 30 of U.S. Letters Patent 5,402,200. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and a permanent cease and desist order.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**FOR FURTHER INFORMATION CONTACT:** Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Final Rules of Practice and Procedure, 59 FR 39020, 39043 (August 1, 1994).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on May 1, 1995, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain low-power computer hard disk drive systems or products containing same by reason of infringement of claims 1, 2, 7, 20–24, or 30 of U.S. Letters Patent 5,402,200, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Conner Peripherals, Inc.

3081 Zanker Road, San Jose, California 95134–2128 (b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

International Business Machines Corporation, 1 Old Orchard Road, Armonk, New York 10504

(c) Smith R. Brittingham IV, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–M, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Final Rules of Practice and Procedure, 59 FR 39020, 39045 (August 1, 1994). Pursuant to 19 CFR 201.16(d) and section 210.13(a) of the Commission's Final Rules, 59 FR at 39045, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint and notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: May 2, 1995.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–11491 Filed 5–9–95; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Office of Juvenile Justice and Delinquency Prevention

**[OJP (OJJDP) No. 1040F]**

**RIN 1121–ZA05**

### Challenge Grants Program Guideline

**AGENCY:** Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

**ACTION:** Notice of final guideline for the Office of Juvenile Justice and Delinquency Prevention's Challenge Grants Program.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) published a proposed guideline for the Challenge Grants Program in the **Federal Register** on February 2, 1995 (60 FR 6553), and solicited public comments. Based on the analysis of those public comments, OJJDP is issuing this final guideline. This Program is of interest to all State formula grantees participating in the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

**DATES:** This final guideline is effective on May 10, 1995.

**ADDRESSES:** Office of Juvenile Justice and Delinquency Prevention, Room 742, 633 Indiana Avenue, N.W., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Rodney L. Albert, Social Science Program Specialist, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, at the above address. Telephone (202) 307–5924.

**SUPPLEMENTARY INFORMATION:** Section 201(b) of the JJDP Act provides that the Administrator ''is authorized to prescribe regulations'' in order to carry out the provisions included in Title II of the Act.

### Changes to Proposed Guideline

The following changes are made to the proposed guideline. New language is italicized. In the section titled ''Eligible Applicants,'' the following sentence is added to the end of the paragraph: Although the State Agency designated by the Chief Executive of the State pursuant to Section 223(a)(1) of the JJDP Act must apply for Challenge activities, they may award subgrants and contracts to public and private agencies for the development and implementation of projects designed to carry out Challenge activities.

In the section titled ''Application Components,'' at the end of Component #7, the following language is added: If the applicant State agency plans to subgrant or contract for services, a complete budget may not be available. In this instance only a budget narrative of anticipated general expenses is required.

In the section titled ''Grant Period'' the length of the grant award has been extended from 18 to 24 months from July 1, 1995.

### Background

Section 285 of Title II, Part E, of the Juvenile Justice and Delinquency Prevention Act (JJDP) of 1974, as amended (42 U.S.C. 5601, et seq.), states that ''The Administrator may make a grant to a State that receives an allocation under section 222, in the amount of 10 percent of the amount of the allocation, for each challenge activity in which the State participates for the purpose of funding the activity.''

Part E—State Challenge Activities is a new program authorized under the 1992 Amendments to the JJDP Act. In FY 1995, Part E received its first appropriation. The purpose of Part E is to provide incentives for States participating in the Formula Grants Program to develop, adopt, and improve policies and programs in one or more of ten specified Challenge Activities. As used in this Guideline, ''State'' is defined in Section 103(7) of the JJDP Act. ''Formula Grant'' refers to a grant to a State under Title II, Part B, of the JJDP Act.

The ten Challenge Activities are defined in Part E as follows:

(A) Developing and adopting policies and programs to provide basic health, mental health, and appropriate education services, including special education, for youth in the juvenile justice system as specified in standards developed by the National Advisory Committee for Juvenile Justice and Delinquency Prevention prior to October 12, 1984.

(B) Developing and adopting policies and programs to provide access to counsel for all juveniles in the justice system to ensure that juveniles consult with counsel before waiving the right to counsel.

(C) Increasing community-based alternatives to incarceration by establishing programs (such as expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, and electronic monitoring) and developing and adopting a set of objective criteria for the appropriate placement of juveniles in detention and secure confinement.

(D) Developing and adopting policies and programs to provide secure settings for the placement of violent juvenile offenders by closing down traditional training schools and replacing them with secure settings with capacities of no more than 50 violent juvenile offenders with ratios of staff to youth great enough to ensure adequate supervision and treatment.

(E) Developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have access to the full range of health and mental health services, treatment for physical or sexual assault and abuse, self defense instruction, education in parenting, education in general, and other training and vocational services.

(F) Establishing and operating, either directly or by contract or arrangement with a public agency or other appropriate private nonprofit organization (other than an agency or organization that is responsible for licensing or certifying out-of-home care services for youth), a State ombudsman office for children, youth, and families to investigate and resolve complaints relating to action, inaction, or decisions of providers of out-of-home care to children and youth (including secure detention and correctional facilities, residential care facilities, public agencies, and social service agencies) that may adversely affect the health, safety, welfare, or rights of resident children and youth.

(G) Developing and adopting policies and programs designed to remove, where appropriate, status offenders from

the jurisdiction of the juvenile court to prevent the placement in secure detention facilities or secure correctional facilities of juveniles who are nonoffenders or who are charged with or who have committed offenses that would not be criminal if committed by an adult.

(H) Developing and adopting policies and programs designed to serve as alternatives to suspension and expulsion from school.

(I) Increasing aftercare services for juveniles involved in the justice system by establishing programs and developing and adopting policies to provide comprehensive health, mental health, education, and vocational services and services that preserve and strengthen the families of such juveniles.

(J) Developing and adopting policies to establish—

(i) a State administrative structure to coordinate program and fiscal policies for children who have emotional and behavioral problems and their families among the major child serving systems, including schools, social services, health services, mental health services, and the juvenile justice system; and

(ii) a statewide case review system. The term ''case review system'' means a procedure for ensuring that—

(a) each youth has a case plan, based on the use of objective criteria for determining a youth's danger to the community or himself or herself, that is designed to achieve appropriate placement in the least restrictive and most family-like setting available in close proximity to the parents' home, consistent with the best interests and special needs of the youth;

(b) the status of each youth is reviewed periodically but not less frequently than once every 3 months, by a court or by administrative review, in order to determine the continuing necessity for and appropriateness of the placement;

(c) with respect to each youth, procedural safeguards will be applied to ensure that a dispositional hearing is held to consider the future status of each youth under State supervision, in a juvenile or family court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, not later than 12 months after the original placement of the youth and periodically thereafter during the continuation of out-of-home placement; and

(d) a youth's health, mental health, and education record is reviewed and updated periodically.

Eligible Applicants: The eligible applicants for Part E Challenge Grants in a given fiscal year are the State Agencies, designated by the Chief Executive of the State pursuant to Section 223(a)(1) of the JJDP Act, which receive an OJJDP Formula Grant award under Section 223 of the JJDP Act for the same fiscal year. In the section titled ''Eligible Applicants,'' the following sentence is added to the end of the paragraph: Although the State Agency designated by the Chief Executive of the State pursuant to Section 223(a)(1) of the JJDP Act must apply for Challenge activities, they may award subgrants and contracts to public and private agencies for the development and implementation of projects designed to carry out Challenge activities.

Funding Levels: The amounts of Part E funds available for the States are determined by the ratio of Part E funds to Formula Grant funds available to the States in a given fiscal year. The same ratio is applied to each State's Formula Grant allocation to determine each eligible State's Part E allocation.

Eligible State agencies will be notified of Part E State allocations annually.

Part E funds not awarded to a State by the end of the fiscal year due to the absence of a qualifying application will either be: (1) Made available to States in the subsequent fiscal year along with the Part E funds appropriated for that year, or (2) in the case of a State not participating in the Formula Grants Program, the State's Part E funds will be reserved for one year if the State (a) submits a written statement of intent to resume participation and (b) describes activities to be undertaken that will be undertaken to enable the State to participate in the following fiscal year.

State Applications and Awards: Each State may apply for a Part E grant in an amount equal to the sum of not more than 10% of such State's Formula Grant allocation received, for each challenge activity in which the State chooses to participate, not to exceed the total amount of the State's Part E allocation.

For example, a State may have a Formula Grant of $600,000 and have a Part E allocation of $100,000. The State could apply for up to $60,000 (10% of the Formula Grant) for each Challenge Activity. However, since a total of $100,000 Part E funds would be available to the State, the State could apply for $60,000 for a first Challenge Activity, and $40,000 for a second Activity. Alternatively, the State could apply for more Challenge Activities by applying for any amounts of not more than $60,000 for each Activity that total not more than $100,000.

The award of Part E funds is contingent upon OJJDP's approval of an application meeting the requirements listed below.

Application Components: Applications for Part E Challenge Activity Grants must contain the following items for each proposed Challenge Activity.

1. *Challenge Activity.* Identification of the Challenge Grant Activity to be implemented.

2. *Statement of Need.* A concise explanation of the need for Federal funding to implement the Challenge Activity.

3. *Project Summary.* A brief summary or abstract describing the activities, goods and services to be funded with Part E funds, as well as collateral activities to be funded from other sources.

4. *Goals, Objectives and Outcomes.* A listing of the goals and objectives for the project, and anticipated outcomes and products.

5. *Strategy.* A concise description of the steps to be taken in implementing the Challenge Activity, including a timeline for implementation. This description must link the proposed strategy with the Challenge Activity as cited in the JJDP Act.

6. *State Advisory Group Involvement and Approval.* A description of the State Advisory Group's (SAG) involvement in the Challenge Activity, and evidence of approval of the application by the SAG.

7. *Budget.* A budget and budget narrative explaining and justifying the costs of proposed Challenge Grant activities. If the applicant State agency plans to subgrant or contract for services, a complete budget may not be available. In this instance only a budget narrative of anticipated general expenses is required.

Grant Period: Part E grants will be awarded for a twenty-four month project period, from July 1, 1995.

Use of Funds: 1. The recipient State Agency shall use Part E funds to implement the proposed Challenge Activities. The State Agency may award grants or enter into contracts with public or private agencies to implement Challenge Activities.

2. Part E funds may be used only in accordance with the General and Administrative provisions of Part I of the JJDP Act and the effective edition of the Office of Justice Programs Guideline M.7100.

Application Due Date: Applications for FY 1995 Challenge Grants may be submitted after publication of the final guideline and must be received by June 30, 1995. For subsequent fiscal years, applications must be received by March

31, in conjunction with the Part B Formula Grants Program Multi-year Plan or Annual Plan Update. Section 223(a) of the JJDP Act requires that the Formula Grants Plan be ''amended annually to include new programs and challenge activities subsequent to State participation in part E.''

Technical Assistance: Technical Assistance to support the States' efforts in implementing the Challenge Activities Program is available from OJJDP through the same process used for requesting technical assistance for the Formula Grants program.

Other Requirements—General: The relevant administrative requirements for categorical grants contained in the effective edition of Office of Justice Programs Guideline M.7100 apply to the Part E Challenge Grant Program. However, Progress Reports for Challenge Grants are required semi-annually, not quarterly as indicated in M.7100.

Other Requirements—Statutory: Section 223(a)(3)(D)(ii) of the JJDP Act requires that the State Advisory Group's annual recommendations to the Chief Executive Officer and the legislature of the State include ''progress relating to challenge activities carried out pursuant to part E.''

Applications for Challenge Grants must contain an assurance that the State will comply with this provision.

**Responses to Public Comments**

Ten comments to the proposed guideline were received. A summary of the comments and OJJDP's responses follow. In some instances, the summary comments listed below incorporate specific comments from more than one respondent. Many responses were in support of the program and did not raise questions specific to the guideline. The following comments reflect the submissions that seek clarification or change.

*Comment.* Several States expressed concern that the proposed guideline specifies that the only eligible applicants are the State Agencies, designated by the Chief Executive of the State. The comments received requested that the States be allowed to contract or subgrant the implementation of Challenge Activities to other entities.

*Response.* The final guideline allows States to award grants or contracts to public and private agencies.

*Comment.* States should be urged to work closely with local (town and municipal, as well as County) entities in the development of community-based alternatives to incarceration and the development of community-based alternatives to suspension and expulsion from school.

*Response.* Just as States are required to provide for active consultation with and participation of units of general local government or combination thereof in the development of the State Plan, OJJDP urges States to work closely with local entities in the development of the Challenge activities. Also, by virtue of the State Advisory Group's involvement in the approval of the Part E—Challenge Grant application, the State will have benefit of SAG input representative of community interests.

*Comment.* States should be given the opportunity to decide how much money to allocate per challenge activity applied whether the sum is more or less than 10% of a State's formula Grant allocation received.

*Response.* The 10% maximum amount is designed to encourage States to undertake multiple challenges. States may elect to allocate less than 10% per challenge activity and to undertake more than two Challenge activities in FY 1995.

*Comment.* Under Application Component 3. Project Summary, it is required that ''collateral activities'' to be funded from other sources be listed. Are collateral activities required in order to receive Challenge Grant funds?

*Response.* The Part E—Challenge Grants Program does not have a ''match'' requirement. However, as with all Federal programs, collaboration to the fullest extent possible is encouraged. States are encouraged to maximize the effectiveness of Challenge activities through coordination with complementary programs funded by other sources.

**Shay Bilchik,**

*Administrator.*

[FR Doc. 95–11449 Filed 5–9–95; 8:45 am]

BILLING CODE 4410–18–P

---

## Office for Victims of Crime

**[OJP NO. 1045]**

**RIN 1121–AA30**

## Victims of Crime Act Victim Assistance Grant Program

**AGENCY:** Department of Justice, Office of Justice Programs, Office for Victims of Crime.

**ACTION:** Interim Final Program Guidelines.

**SUMMARY:** The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), is publishing Interim Final Program Guidelines to implement the victim assistance grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, *et seq.* (hereafter referred to as VOCA).

**EFFECTIVE DATE:** These Interim Final Program Guidelines are effective May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Carolyn A. Hightower, Acting Director, State Compensation and Assistance Division, telephone number (202) 307–5947.

**SUPPLEMENTARY INFORMATION:** VOCA authorizes Federal financial assistance to States for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of Federal crimes. These Program Guidelines provide information on the administration and implementation of the VOCA victim assistance grant program as authorized in Section 1404 of VOCA, Public Law 98–473, as amended, codified at 42 U.S.C. 10603, and contain information on the following: Background; Allocation of VOCA Victim Assistance Funds; VOCA Victim Assistance Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and Termination of Funding. The Guidelines are based on the experience gained during the first nine years of the grant program and are in accordance with VOCA. These Interim Final Program Guidelines supersede any Guidelines issued previously by OVC.

The Office of Justice Programs, Office for Victims of Crime, has determined that this rule is not a ''significant regulatory action'' for purposes of Executive Order 12866 and, accordingly, these Guidelines were not reviewed by the Office of Management and Budget.

In addition, these Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these rules on such entities is not required by the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

The collection of information requirements contained in the **Program Requirements** section was submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, 44 U.S.C. 3504(h). Approval to use the specified reports to gather information on the use and impact of VOCA victim assistance grant funds has been granted by OMB.

**Background**

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury and authorized the Fund to receive deposits of fines and penalties

levied against criminals convicted of Federal crimes. This Fund provides the source of funding for carrying out all of the activities authorized by VOCA.

OVC serves as the Federal government's chief advocate for all crime victim issues, which includes ensuring that the criminal justice system addresses the legitimate rights and interests of crime victims. OVC's program activities support this role. These Program Guidelines address the specific program and financial requirements of the VOCA crime victim assistance grant program.

OVC makes annual VOCA crime victim assistance grants from the Fund to States. The primary purposes of these grants are to support the provision of direct services to victims of violent crime throughout the Nation. For the purpose of these Guidelines, direct services are defined as those efforts that (1) respond to the emotional and physical needs of crime victims; (2) assist primary and secondary victims of crime to stabilize their lives after a victimization; (3) assist victims to understand and participate in the criminal justice system; and (4) provide victims of crime with a measure of safety such as boarding-up broken windows and replacing or repairing locks.

For the purpose of the VOCA crime victim assistance grant program, a crime victim is a person who has suffered physical, sexual, or emotional harm as a result of the commission of a crime.

VOCA gives latitude to State grantees to determine how VOCA victim assistance grant funds will best be used within each State. However, each State grantee must abide by the minimal statutory requirements outlined in VOCA and these Program Guidelines.

## Allocation of VOCA Victim Assistance Funds

### *A. Distribution of the Crime Victims Fund*

OVC administers monies deposited into the Fund for activities, as authorized in VOCA. The amount of funds available for distribution each year is dependent upon the total deposits into the Fund during the previous Federal Fiscal Year (October 1 through September 30).

The Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322, Title XXIII, Subtitle B) amended VOCA and made three major changes that affect the VOCA victim assistance grant program. First, the Director of OVC has the authority to retain up to $20,000,000 to be held in reserve and used in a year in which the Fund falls below the amount available in the previous year [Section 1402(d)(4)]. Second, the legislation changed the formula for allocating Fund deposits [Section 1402(d)]. Third, State administrators of VOCA victim assistance grant funds may retain up to 5% of each year's grant for administrative purposes [Section 1404(b)(3).] Please refer to the section entitled VOCA Victim Assistance Application Process, *B. Administrative Cost Provision for State Grantees* for information on this provision.

### *B. Formula for Distributing Crime Victims Fund Deposits*

Beginning with FFY 1995, deposits into the Fund will be distributed as follows [Section 1402 (d)]:

1. The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the Federal judicial branch for administrative costs to carry out the functions of the judicial branch under Sections 3611 of Title 18, U.S. Code [See Section 1402 (d)(1)].

2. Of the next $10,000,000 deposited in the Fund in a particular fiscal year,

a. 85% shall be available to the Secretary of Health and Human Services for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for improving the investigation and prosecution of child abuse cases;

b. 15% shall be available to the Director of the Office for Victims of Crime for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for assisting Native American Indian tribes in developing, establishing, and operating programs to improve the investigation and prosecution of child abuse cases.

3. Of the remaining amount deposited in the Fund in a particular fiscal year,

a. 48.5% shall be available for victim compensation grants,

b. 48.5% shall be available for victim assistance grants; and

c. 3% shall be available for demonstration projects and training and technical assistance services to eligible crime victim assistance programs and for the financial support of services to victims of Federal crime by eligible crime victim assistance programs.

### *C. Availability of Funds*

All States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and Palau (hereinafter referred to as ''States'') are eligible to apply for, and receive, VOCA victim assistance grants. [See Section 1404(d)(3) of VOCA, codified at 42 U.S.C. 10603(d)(3).]

Funds are available for expenditure during the FFY of award and in the next FFY (the grant period). The FFY begins on October 1 and ends on September 30 of the following year. State grantees may incur expenses retroactively to the beginning of each year's grant, October 1, even though the VOCA grant may not be awarded until later in the grant period. Under VOCA, funds that are not obligated by the end of the grant period must be returned to the General Fund of the U.S. Treasury. Therefore, State grantees are encouraged to monitor closely the expenditure of VOCA funds at the subrecipient level and to reallocate unexpended funds prior to the end of the grant period.

### *D. Allocation of Funds to States*

From the Fund deposits available for victim assistance grants, each State grantee receives a base amount of $200,000, except Palau. The remaining Fund deposits are distributed to each State, based upon the State's population in relation to all other States, as determined by current census data.

### *E. Allocation of Funds Within the States*

The Governor of each State designates the State agency that will administer the VOCA victim assistance grant program. That designated State agency establishes policies and procedures, which must meet the minimum requirements of VOCA and the Program Guidelines. The State grantee can choose to be more restrictive.

VOCA funds granted to the States are to be used by eligible public and private nonprofit organizations to provide direct services to crime victims. States have sole discretion for determining which organizations will receive funds, and in what amounts, as long as the recipients meet the requirements of VOCA and the Program Guidelines.

State grantees are encouraged to develop a VOCA program funding strategy, which should consider the following: the range of victim services throughout the State and within communities; the unmet needs of crime victims; the demographic profile of crime victims; the coordinated, cooperative response of community organizations in organizing services for crime victims; the availability of services to crime victims throughout the criminal justice process; and the extent to which other sources of funding are available for services.

State grantees are encouraged to expand into new service areas as needs change and demographics of crime changes within the State. Many State

grantees use VOCA funds to stabilize victim services by continuously funding selected organizations. Some State grantees end funding to organizations after several years in order to fund new organizations. Other State grantees limit the number of years an organization may receive VOCA funds. These practices are within the State grantee's discretion and are supported by OVC, when they serve the best interests of crime victims within the State.

State grantees may award VOCA funds to organizations that are physically located in an adjacent State, when it is an efficient and cost-effective mechanism available for providing services to victims who reside in the awarding State. When adjacent State awards are made, the amount of the award must be proportional to the number of victims to be served by the adjacent-State organization. OVC recommends that State grantees enter into an interstate agreement with the adjacent State to address monitoring of the VOCA subrecipient, auditing Federal funds, managing noncompliance issues, and reporting requirements. States must notify OVC of each VOCA award made to an organization in another State.

**VOCA Victim Assistance Application Process**

*A. State Grantee Application Process*

Each year, OVC issues a Program Instruction and Application Kit to each designated State agency. The Application Kit contains the necessary forms and information required to make application for VOCA grant funds, including the Application for Federal Assistance, Standard Form 424. The amount for which each State may apply is included in the Application Kit. At the time of application, State grantees are not required to provide specific information regarding the subrecipients that will receive VOCA victim assistance funds.

In addition to the Application for Federal Assistance, State grantees shall specify their arrangements for complying with the provisions of OMB Circular A–128 (Audits of State or Local Government) and shall submit Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements; Civil Rights Compliance; and/or any other certifications required by OJP and OVC.

*B. Administrative Cost Provision for State Grantees*

Beginning with the FFY 1995 grant, each State grantee may retain up to, but not more than, 5% of each year's grant for administering the VOCA victim assistance grant at the State grantee level [Section 1402(d)(3)], with the remaining portion being used exclusively for direct services to crime victims or to train direct service providers in accordance with these Guidelines. This option is available to the State grantee and does not apply to VOCA subrecipients.

This administrative cost provision is to be used by the State grantee to expand, enhance, and/or improve the State's previous level of effort in administering the VOCA victim assistance grant program at the State level and to support activities and costs that impact the delivery and quality of services to crime victims throughout the State. Thus, State grantees will be required to certify that VOCA administrative funds will not be used to supplant State funds or to cover indirect costs.

State grantees are not required to match the portion of the grant that is used for administrative purposes.

1. The following are examples of activities that are directly related to managing the VOCA grant and can be supported with administrative funds:

a. Pay salaries and benefits for staff and consultant fees to administer and manage the financial and programmatic aspects of VOCA;

b. Attend OVC-sponsored technical assistance meetings, which address issues and concerns to State administrators;

c. Monitor subrecipients, Victim Assistance in Indian Country subrecipients, and potential subrecipients, provide technical assistance, and/or evaluation and assessment of program activities;

d. Purchase equipment for the State grantee such as computers, software, fax machines, copying machines;

e. Train VOCA direct service providers; and

f. Purchase memberships in crime victims organizations and purchase victim-related materials such as curricula, literature, and protocols.

2. The following activities impact the delivery and quality of services to crime victims throughout the State and, thus, can be supported by administrative funds:

a. Develop strategic plans on a State and/or regional basis, conduct surveys and needs assessments, promote innovative approaches to serving crime victims such as through the use of technology;

b. Improve coordination efforts on behalf of crime victims with other OJP Offices and Bureaus and with Federal, State, and local agencies and organizations;

c. Provide training on crime victim issues to State, public, and nonprofit organizations that serve or assist crime victims such as law enforcement officials, prosecutors, judges, corrections personnel, social service workers, child and youth service providers, and mental health and medical professionals;

d. Purchase, print, and/or develop publications such as training manuals for service providers, victim services directories, and brochures;

e. Coordinate and develop protocols, policies, and procedures that promote systemic change in the ways crime victims are treated and served; and

f. Train managers of victim service agencies.

State grantees are required to notify OVC of the decision to use administrative funds prior to charging or incurring any costs against this provision. State grantees may notify OVC when the decision is made to exercise this option or at the time the Application for Federal Assistance is submitted.

Each State grantee that chooses to use administrative funds is required to submit a statement to OVC describing:

1. What amount of the total grant will be used,

2. How the State grantee intends to use the funds and the types of activities that will be supported, and

3. How these activities will improve the administration of the VOCA program and/or improve services to crime victims.

State grantees may choose to award administrative funds to a ''conduit'' organization that assists in selecting qualified subrecipients and/or reduces the State grantee's administrative burden in implementing the grant program. However, the use of a ''conduit'' organization does not relieve the State grantee from ultimate programmatic and financial responsibilities.

*C. Use of Funds for Training*

State grantees have the option of retaining a portion of their VOCA victim assistance grant for conducting State-wide and/or regional State training(s) of victim services staff. The maximum amount permitted for this purpose is $5,000 or 1% of the State's grant, which ever is greater. State grantees that choose to sponsor State-wide or regional training(s) are not precluded from awarding VOCA funds to subrecipients for other types of staff development.

State grantees must submit a training proposal to OVC for each event to be

sponsored under this option. OVC will review each proposal to identify other sources of assistance and support that may be available such as trainers or the resources from the OVC Resource Center. Each training activity must occur within the grant period, and all training costs must be obligated prior to the end of the grant period. VOCA grant funds cannot be used to supplant the cost of existing State administrative staff or related State training efforts.

Specific criteria for applying for training funds will be given in each year's Application Kit. This criteria may include addressing the goals, the needs of the service providers, how funds will be used, and how any program income that is generated will be used.

The VOCA funds used for training by the State grantee must be matched at 20%, cash or in-kind, and the source of the match must be described.

**Program Requirements**

*A. State Grantee Eligibility Requirements*

When applying for the VOCA victim assistance grant, State grantees are required to give assurances that the following conditions or requirements will be met:

1. Only eligible organizations will receive VOCA funds and these funds will be used only for direct services to victims of crime, except those funds that the State grantee uses for training victim service providers and/or administrative purposes. [Sections 1404(b), codified at 42 U.S.C. 10603(b)]. See section *E. Services, Activities, and Costs at the Subrecipient Level* for examples of direct services to crime victims.

2. VOCA crime victim assistance grant funds will enhance or expand services and will not be used to supplant State and local funds that would otherwise be available for crime victim services. See Section 1404(a)(2)(C) of VOCA, codified at 10603(a)(2)(C). This supplantation clause applies to State and local public agencies only.

3. Priority shall be given to victims of sexual assault, spousal abuse, and child abuse. Thus a minimum of 10% of each FFY's grant (30% total) will be allocated to each of these categories of crime victims. This State grantee requirement does not apply to VOCA subrecipients.

Each State grantee must meet this requirement, unless it can demonstrate to OVC that (1) a ''priority'' category is currently receiving significant amounts of financial assistance from the State or other funding sources; (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; and (3) crime rates for a ''priority'' category have diminished.

4. An additional 10% of each VOCA grant will be allocated to victims of violent crime (other than ''priority'' category victims) who were ''previously under served.'' These under served victims of either adult or juvenile offenders may include, but are not limited to, survivors of homicide victims, or victims of assault, robbery, intoxicated drivers, bank robbery, and elder abuse. For the purpose of this program, elder abuse is defined as the abuse of vulnerable adults. Vulnerable adults are those individuals who do not have the mental and/or physical capacity to manage their daily needs, and who are subjected to either physical or emotional abuse by a guardian or caretaker.

To meet this under served requirement, State grantees must identify crime victims by type of crime. Each State grantee has latitude for determining the method for identifying ''previously under served'' crime victims, which may include public hearings, needs assessments, task forces, and meetings with State-wide victim services agencies.

Each State grantee must meet this requirement, unless it can justify to OVC that (1) services to these victims of violent crime are receiving significant amounts of financial assistance from the State or other funding sources; (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; and (3) crime rates for these victims of violent crime have diminished.

State grantees may fund services to victims with specific demographic profiles and use those services to meet the ''previously under served'' requirement. However, State grantees must identify the type of violent crime to which these victims are subjected.

5. Appropriate accounting, auditing, and monitoring procedures will be used at the State grantee and subrecipient levels and that records are maintained to ensure fiscal control, proper management, and efficient disbursement of the VOCA victim assistance funds, in accordance with the *Financial and Administrative Guide for Grants* (M7100.1D), effective edition.

6. Compliance with all Federal laws and regulations applicable to Federal assistance programs and with the provisions of Title 28 Code of Federal Requirements (CFR) applicable to grants.

7. Compliance by the State grantee and subrecipients with the applicable provisions of VOCA and the Interim Final Program Guidelines.

8. Programmatic and financial reports shall be submitted. (See Program Requirements and Financial Requirements for reporting requirements and timelines.)

9. No person shall, on the grounds of race, color, religion, national origin, handicap, or sex, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with VOCA victim assistance grant funds.

10. A copy of a finding will be forwarded to the Office of Civil Rights (OCR) for OJP in the event a Federal or State court or administrative agency makes a finding of discrimination on the grounds of race, religion, national origin, sex, or disability against a recipient of VOCA victim assistance funds.

11. Immediate notification will be given to OVC in the event of a finding of fraud, waste, and/or abuse of VOCA funds. Additionally, OVC will be apprised of the status of any on-going investigations.

OVC encourages State grantees to coordinate their VOCA assistance and compensation activities. Coordination may include activities such as meetings; training activities for direct service providers on the general parameters of the State compensation agency's program (e.g., eligibility criteria, completion of claims, and time frames for receiving compensation); providing information on VOCA victim assistance services within the State; and developing joint guidance, where applicable, on third-party payments to VOCA assistance organizations.

OVC also encourages State grantees to coordinate their activities with the Victim/Witness Coordinator staff within U.S. Attorney Offices to ensure that the Coordinators are aware of available resources for victims of Federal crime. Such coordination may include providing Coordinators with a list of VOCA-funded organizations, co-sponsoring training activities, and inviting Coordinators to serve on review panels that select the organizations to receive VOCA funds.

*B. Subrecipient Organization Eligibility Requirements*

VOCA establishes eligibility criteria that must be met by all organizations that receive VOCA funds. These funds are to be awarded to subrecipients only for providing services to victims of crime through their staff. Each subrecipient organization shall:

1. Be operated by a public or nonprofit organization, or a combination

of such organizations, and provide direct services to crime victims.

2. Demonstrate a record of providing effective direct services to crime victims. This includes having the support and approval of its services by the community, a history of providing direct services in a cost-effective manner, and financial support from non-Federal sources.

3. Meet program match requirements. Match is to be committed for each VOCA-funded project and derived from resources other than Federal funds and/or resources, except as provided in Chapter 2, paragraph 14, of the *Financial and Administrative Guide for Grants* (M7100.1D.)

All funds designated as match are restricted to the same uses as the VOCA victim assistance funds and must be expended within the grant period. Because of this requirement, VOCA subrecipients must maintain records which clearly show the source, the amount, and the period during which the match was expended. Therefore, organizations are encouraged not to commit excessive amounts of match.

Match requirements are a minimum of 20%, cash or in-kind, of the total VOCA project (VOCA grant plus match) except as follows:

a. The match for VOCA subrecipients that are Native American tribes/organizations located on reservations, whether new or existing, is 5%, cash or in-kind, of the total VOCA project (VOCA grant plus match.) A Native American tribe/organization is described as any tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans. A reservation is defined as a tract of land set aside for use of, and occupancy by, Native Americans.

b. Subrecipients located in the U.S. Virgin Islands, and all other territories and possessions of the United States except Puerto Rico are not required to match the VOCA funds. See 48 U.S. Code, 1469a(d).

4. Use volunteers unless the State grantee determines there is a compelling reason to waive this requirement. A ''compelling reason'' may be a statutory or contractual provision concerning liability or confidentiality of counselor/victim information, which bars using volunteers for certain positions, or the inability to recruit and maintain volunteers after a sustained and aggressive effort.

5. Promote, within the community coordinated public and private efforts to aid crime victims. Coordination may include, but is not limited to, serving on State, Federal, local, or Native American task forces, commissions and/or working groups; and developing written agreements, which contribute to better and more comprehensive services to crime victims. Coordination efforts qualify an organization to receive VOCA victim assistance funds, but are not activities that can be supported with VOCA funds.

6. Assist crime victims in seeking crime victim compensation benefits. Such assistance may include identifying and notifying crime victims of the availability of compensation, assisting them with application forms and procedures, obtaining necessary documentation, and/or checking on claim status.

7. Comply with the applicable provisions of VOCA, the Program Guidelines, and the requirements of the M7100.1D, which includes maintaining appropriate programmatic and financial records that fully disclose the amount and disposition of VOCA funds received. This includes financial documentation for disbursements; daily time and attendance records specifying time devoted to VOCA allowable victim services; client files; the portion of the project supplied by other sources of revenue; job descriptions; contracts for services; and other records which facilitate an effective audit.

8. Maintain statutorily required civil rights statistics on victims served by race or national origin, sex, age, and disability, within the timetable established by the State grantee; and permit reasonable access to its books, documents, papers, and records to determine whether the recipient is complying with applicable civil rights laws. This requirement is waived when providing a service, such as telephone counseling, where soliciting the information may be inappropriate or offensive to the crime victim.

9. Abide by any additional eligibility or service criteria as established by the State grantee including submitting statistical and programmatic information on the use and impact of VOCA funds, as requested by the State grantee.

10. Provide services to victims of Federal crimes on the same basis as victims of State crimes.

11. Provide services to crime victims, at no charge, through the VOCA-funded project. Any deviation from this provision requires prior approval by the State grantee and OVC.

12. Maintain confidentiality of client-counselor information, as required by State and Federal law.

*C. Eligible Subrecipient Organizations*

Nonprofit and public organizations that provide direct services to crime victims are eligible to receive VOCA funds. These include, but are not limited to, sexual assault and treatment centers, domestic violence programs, child abuse treatment facilities, centers for missing children, prosecutor offices, courts, correctional departments, probation and paroling authorities, hospitals, public housing authorities, and other community-based organizations including those who serve survivors of homicide victims.

Although nonprofit and public organizations may be eligible to receive VOCA funding, there are limitations on the use of VOCA victim assistance grant funds by these organizations. For example, VOCA funds should not be used for an activity mandated by State legislation. However, VOCA funds can extend or enhance the legislatively mandated activities. In situations where a service is mandated by law but funds have not been appropriated, State grantees are cautioned to closely review and justify to OVC the use of VOCA funds to support such activities. With approval from OVC, State grantees may use VOCA funds to support an unfunded legislative mandate for a limited time, if the State grantee believes that such support is essential to meeting the needs of crime victims.

In addition to victim services organizations, whose sole mission is to serve crime victims, many other public and nonprofit organizations that offer services to crime victims may be eligible to receive VOCA victim assistance funds. These organizations include, but are not limited to, the following:

1. Criminal justice agencies such as law enforcement organizations, prosecutor offices, courts, corrections departments, probation and paroling authorities. For example, a police department cannot use VOCA victim assistance funds to hire law enforcement personnel for activities that a sworn law enforcement officer would be expected to provide in the normal course of his/her duties, such as crime scene intervention, questioning of victims and witnesses, investigation of the crime, and follow-up activities. However, these organizations may use VOCA funds for victims services that exceed the boundaries of their mandate.

2. State and local public agencies charged with, for example, providing child and adult protective services or mental health services.

3. Religiously-affiliated organizations. Religious organizations that receive VOCA funds must ensure that (1)

services are offered to all crime victims without regard to religious affiliation; (2) the receipt of services is not contingent upon participation in a religious activity or event; and (3) receipt of the funds does not create an ''excessive entanglement'' of church and State.

4. Other public and nonprofit organizations whose primary mission or purpose is not providing direct services to crime victims if there is a component of the organization that provides services to crime victims. Such organizations include State grantees, mental health centers, hospitals, legal services agencies, and coalitions.

5. State crime victim compensation agencies. Compensation programs may receive VOCA assistance funds if direct services such as individual, family, and group counseling; court accompaniment; and shelter are provided. These services extend far beyond information/referral and providing information regarding compensation and other sources of public and private assistance. Because State compensation programs do not generally provide the type of direct services envisioned by VOCA and the Program Guidelines, State grantees are encouraged to discuss with OVC, prior to making a final funding decision, any proposed award of VOCA victim assistance funds to a compensation program.

6. Hospitals and emergency medical facilities. Such organizations must offer counseling, support groups, and/or other types of victim services. In addition, State grantees may only award VOCA funds to a medical facility for the purpose of performing forensic examinations on sexual assault victims if (1) the examination meets the standards established by the State, local prosecutor's office, or State-wide sexual assault coalition; *and* (2) appropriate crisis counseling and/or other types of victim services are offered to the victim in conjunction with the examination.

*D. Ineligible Recipients of VOCA Funds*

Some public and nonprofit organizations that offer services to crime victims are not eligible to receive VOCA victim assistance funding. These organizations include, but are not limited to, the following:

1. Federal agencies, including U.S. Attorneys Offices. Receipt of VOCA funds would constitute an augmentation of the Federal budget with money intended for State agencies. However, private nonprofit organizations that operate on Federal land may be eligible subrecipients of VOCA victim assistance grant funds.

2. In-patient treatment facilities such as those designed to provide treatment to individuals with drug, alcohol, and/or mental health-related conditions.

*E. Services, Activities, and Costs at the Subrecipient Level*

The following is a listing of services, activities, and costs that are eligible for support with VOCA victim assistance grant funds within a subrecipient's organization:

1. Those services which immediately respond to the emotional and physical needs (excluding medical care) of crime victims such as crisis intervention; accompaniment to hospitals for medical examinations; hotline counseling; emergency food, clothing, transportation, and shelter; emergency legal assistance such as filing restraining orders; and other emergency services that are intended to restore the victim's sense of dignity, and self esteem.

2. Those services and activities that assist the primary and secondary victims of crime in understanding the dynamics of victimization and in stabilizing their lives after a victimization such as counseling, group treatment, and therapy. ''Therapy'' refers to intensive professional psychological/psychiatric treatment for individuals, couples, and family members related to counseling to provide emotional support in crises arising from the occurrence of crime. This includes the evaluation of mental health needs, as well as the actual delivery of psychotherapy.

3. Services that are directed to the needs of the victims who participate in the criminal justice system. These services may include advocacy on behalf of crime victims; accompaniment to criminal justice offices and court; transportation to court; child care to enable a victims to attend court; notification of victims regarding trial dates, case disposition information, and parole consideration procedures; and restitution advocacy and assistance with victim impact statements.

4. Services which offer an immediate measure of safety to crime victims such as boarding-up broken windows and replacing or repairing locks.

5. Forensic examinations for sexual assault victims only to the extent that other funding sources (such as State compensation or private insurance or public benefits) are unavailable or insufficient. State grantees should establish procedures to monitor the use of VOCA victim assistance funds to pay for forensic examinations in sexual assault cases.

6. Costs that are necessary and essential to providing direct services such as pro-rated costs of rent, telephone service, transportation costs for victims to receive services, emergency transportation costs that enable a victim to participate in the criminal justice system, and local travel expenses for direct service providers.

7. Services which assist crime victims with managing practical problems created by the victimization such as acting on behalf of the victim with other service providers, creditors, or employers; assisting the victim to recover property that is retained as evidence; assisting in filing for compensation benefits; and helping to apply for public assistance.

8. Costs that are directly related to providing direct services through staff. Such costs may consist of the following: advertising costs associated with recruiting VOCA-funded personnel; training costs for paid and volunteer staff; salaries and fringe benefits, including malpractice insurance.

9. Opportunities where crime victims have the option to meet with perpetrators, if such meetings are requested by the victim and have therapeutic value to crime victims.

State grantees that plan to fund this type of service should closely review the criteria for conducting these meetings. At a minimum, the following should be considered: (1) The benefit or therapeutic value to the victim, (2) the procedures for ensuring that participation of the victim and offender are voluntary and that everyone understands the nature of the meeting, (3) the provision of appropriate support and accompaniment for the victim, (4) appropriate ''debriefing'' opportunities for the victim after the meeting or panel, (5) the credentials of the facilitators, (6) the opportunity for a crime victim to withdraw from the process at any time. State grantees are encouraged to discuss proposals with OVC prior to awarding VOCA funds for this type of activity. VOCA assistance funds cannot be used for victim-offender meetings which serve to replace criminal justice proceedings.

The services, activities, and costs listed below are not generally considered direct crime victim services. For example, staff training is often a necessary and essential activity to ensure that quality direct services are provided; however, it is not a direct service. Before these costs can be supported with VOCA funds, the State grantee and subrecipient must agree that direct services to crime victims cannot be offered without support for these expenses; that the subrecipient has no other source of support for them; and that only limited amounts of VOCA

funds will be used for these purposes. The following list provides examples of such items:

1. Skills training for staff. VOCA funds designated for training are to be used exclusively for developing the skills of direct service providers including paid staff and volunteers, so that they are better able to offer quality services to crime victims. An example of skills development is training focused on how to respond to a victim in crisis.

VOCA funds can be used for training direct service providers who are not supported with VOCA funds within the subrecipient's organization.

VOCA funds can be used to purchase materials such as books, training manuals, and videos for direct service providers, within the VOCA-funded organization, and can support the costs of a trainer for in-service staff development. Although a subrecipient cannot use VOCA funds for training individuals in other organizations, staff from other organizations can attend in-service training activities that are held for the subrecipient's staff.

VOCA funds can support costs such as travel, meals, lodging, and registration fees to attend training within the State or a similar geographic area. This limitation encourages State grantees and subrecipients to first look for available training within their immediate geographical area, as travel costs will be minimal. However, when needed training is unavailable within the immediate geographical area, State grantees may authorize using VOCA funds to support training outside of the geographical area.

VOCA funds cannot be used for management and administrative training for executive directors, board members, and other individuals that do not provide direct services.

2. Equipment and furniture. VOCA funds may be used for furniture and equipment that provides or enhances direct services to crime victims, as demonstrated by the VOCA subrecipient.

VOCA funds cannot support the entire cost of an item that is not used exclusively for victim-related activities. However, VOCA funds can support a prorated share of such an item. In addition, subrecipients cannot use VOCA funds to purchase equipment for another organization or individual to perform a victim-related service.

State grantees that authorize equipment to be purchased with VOCA funds must establish policies and procedures on the acquisition and disbursement of the equipment, in the event the subrecipient no longer receives a VOCA grant. At a minimum, property records must be maintained with the following: a description of the property and a serial number or other identifying number; who holds title; the acquisition date; the cost and the percentage of VOCA funds supporting the purchase; the location, use, and condition of the property; and any disposition data, including the date of disposal and sale price. (See Financial and Administrative Guide for Grants, M7100.1D).

3. Contracts for professional services. VOCA funds should not generally be used to support contract services. However, at times, it may be necessary for VOCA subrecipients to use a portion of the VOCA grant to contract for specialized services. Examples of these services include assistance in filing emergency temporary retraining orders; forensic examinations on a sexual assault victim to the extent that other funding sources are unavailable or insufficient; and emergency psychological or psychiatric services.

Subrecipients are prohibited from using a majority of VOCA funds for contracted services, which contain administrative, overhead, and other indirect costs included in the hourly or daily rate.

VOCA funds cannot be used to pay for legal representation such as for divorces and child custody or visitation rights litigation.

4. Operating costs. Examples of allowable operating costs include supplies; equipment use fees, when supported by usage logs; printing, photocopying, and postage; brochures which describe available services; and books and other victim-related materials. VOCA funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics; administrative time to maintain crime victims' records; and the pro-rated share of audit costs.

5. Supervision of direct service providers. State grantees may provide VOCA funds for supervision of direct service providers when they determine that such supervision is necessary and essential to providing direct services to crime victims. For example, a State grantee may determine that using VOCA funds to support a coordinator of volunteers or interns is a cost-effective way of serving more crime victims.

6. Repair and/or replacement of essential items. VOCA funds may be used for repair or replacement of items that contribute to maintaining a healthy and/or safe environment for crime victims such as a furnace in a shelter. State grantees are cautioned to scrutinize each request for expending VOCA funds for such purposes to ensure the following: (1) That the building is owned by the subrecipient organization and not rented or leased, (2) all other sources of funding have been exhausted, (3) there is no available option for providing the service in another location, (4) that the cost of the repair or replacement is reasonable considering the value of the building, and (5) the cost of the repair or replacement is pro-rated among all sources of income.

7. Presentations about crime victim services. Activities and costs related to describing the services available to crime victims within the community, such as presentations, can be supported by VOCA funds.

The following services, activities, and costs, although not exhaustive, cannot be supported with VOCA victim assistance grant funds:

1. Lobbying and administrative advocacy. VOCA funds cannot support victim legislation or administrative reform, whether conducted directly or indirectly.

2. Perpetrator rehabilitation and counseling. Subrecipients cannot knowingly use VOCA funds to offer rehabilitative services to offenders. Likewise, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.

3. Needs assessments, surveys, evaluations, studies, and research efforts conducted by individuals, organizations, task forces, or special commissions, which study and/or research a particular crime victim issue.

4. Activities directed at prosecuting an offender and/or improving the criminal justice system's effectiveness and efficiency such as witness notification and management activities and expert testimony at a trial. Additionally, victim protection costs and victim/witness expenses such as travel to testify in court and subsequent lodging and meal expenses are considered part of the criminal justice agency's responsibility and cannot be supported with VOCA funds.

5. Fundraising activities.

6. Indirect organizational costs such as liability insurance on buildings and vehicles; capital improvements; security guards and body guards; property losses and expenses; real estate purchases; mortgage payments; and construction costs.

7. Reimbursing crime victims for expenses incurred as a result of a crime such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills.

8. Vehicles, purchased or leased. State grantees may not use VOCA funds to purchase or lease vehicles unless they can demonstrate to OVC that such an expenditure is essential to delivering services to crime victims. OVC must give prior approval for all such purchases.

9. Nursing home care, home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical and/or dental treatment. VOCA victim assistance grant funds cannot support medical costs resulting from a victimization, except for forensic medical examinations for sexual assault victims.

10. Relocation expenses for crime victims such as moving expenses, security deposits on housing, ongoing rent, and mortgage payments. However, VOCA funds may be used to support staff time in locating resources to assist victims with these expenses.

11. Salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless these expenses are incurred while providing direct services to crime victims.

12. Development of protocols, interagency agreements, and other working agreements that benefit crime victims. These activities are considered examples of the types of activities that subrecipients undertake as part of their role as a victim services organization, which in turn qualifies them as an eligible VOCA subrecipient.

13. Costs of sending individual crime victims to conferences.

14. Development of training manuals and/or extensive training materials.

15. Crime prevention activities.

*Program Reporting Requirements*

State grantees must adhere to all reporting requirements and timelines for submitting the required reports, as indicated below. Failure to do so may result in a hold being placed on the drawdown of the current year's funds, a hold being placed on processing the next year's grant award, or can result in the suspension or termination of a grant.

1. Subgrant Award Reports. State grantees are required to submit to OVC, within 90 days of making the subaward, Subgrant Award Report information for each subrecipient of VOCA victim assistance grant funds. Subgrant Award Report information is to be submitted to OVC via the automated subgrant dial-in system, whenever possible. When not possible, State grantees must complete and submit the Subgrant Award Report form, OJP 7390/2A, for each VOCA subrecipient.

If the Subgrant Award Report information changes by the end of the grant period, State grantees must inform OVC of the changes, either by revising the information via the automated subgrant subdial system, by completing and submitting to OVC a revised Subgrant Award Report form, or by making notations on the State-wide database report and submitting it to OVC. The total of all Subgrant Award Reports submitted by the State grantee must agree with the Final Financial Status Report (Standard Form 269A) that is submitted at the end of the grant period.

A Subgrant Award Report is required for each organization that receives VOCA funds and uses the funds for such allowable expenses including employee salaries, fringe benefits, supplies, and rent. This requirement applies to all State grantee awards including grants, contracts, or subgrants and to all subrecipient organizations.

Subgrant Award Reports are not to be completed for organizations that serve only as conduits for distributing VOCA funds or for organizations that provide limited, emergency services, on an hourly rate, to the VOCA subrecipient organizations. Services and activities that are purchased by a VOCA subrecipient are to be included on the subrecipient's Subgrant Award Report.

2. Performance Report. Each State grantee is required to submit specific end-of-grant data on the OVC-provided Performance Report, form No. OJP 7390/4, no later than 90 days after each VOCA victim assistance grant ends.

For those State grantees who opt to use a portion of the VOCA victim assistance grant for administrative costs, the Performance Report will be used to describe how the funds were actually used and the impact of the 5% administrative funds on the State grantee's ability to expand, enhance, and improve services to crime victims.

*A. Additional Program Requirements*

1. Civil Rights—Prohibition of Discrimination for Recipients of Federal Funds. No person in any State shall, on the grounds of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving Federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681–1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*

2. Confidentiality of Research Information. Except as otherwise provided by Federal law, no recipient of monies under VOCA shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with VOCA. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. [See Section 1407(d) of VOCA, codified at 42 U.S.C. 10604.]

This provision is intended, among other things, to ensure the confidentiality of information provided by crime victims to counselors working for victim services programs receiving VOCA funds. Whatever the scope of application given this provision, it is clear that there is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information, which is supportive of VOCA's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst State School and Hospital* v. *Halderman, et al.*, 451 U.S. 1 (1981). Furthermore, this confidentiality provision should not be interpreted to thwart the legitimate informational needs of public agencies. For example, this provision does not prohibit a domestic violence shelter from acknowledging, in response to an inquiry by a law enforcement agency conducting a missing person investigation, that the person is safe in the shelter. Similarly, this provision does not prohibit access to a victim service project by a Federal or State

agency seeking to determine whether Federal and State funds are being utilized in accordance with funding agreements.

**Financial Requirements**

State grantees and subrecipients of VOCA victim assistance funds shall adhere to the financial and administrative provisions set forth in the OJP ''Financial and Administrative Guide for Grants'', M7100.1D (effective edition). The following describes the audit requirements for State grantees and subrecipients, the completion and submission of Financial Status Reports, and actions that result in termination of advanced funding.

*A. Audit Responsibilities for State Grantees*

Pursuant to OMB Circular A–128 (Audits of State or Local Governments), State grantees that receive $100,000 or more in Federal financial assistance in any fiscal year must have a single audit for that year. State grantees receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing a single audit or an audit of the Federal program, as required by the applicable Federal laws and regulations. State and local governments receiving less than $25,000 in any fiscal year are exempt from audit requirements.

*B. Audit Responsibilities for Subrecipients*

Pursuant to OMB Circular A–128 (Audits of State or Local Governments), local governments that receive $100,000 or more in Federal financial assistance in any fiscal year shall have a single audit for that year. Local governments receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing a single audit or an audit of the Federal program, as required by the applicable Federal laws and regulations. Local governments receiving less than $25,000 in any fiscal year are exempt from audit requirements.

Institutions of higher education and other nonprofit organizations that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–133. Organizations and institutions that receive at least $25,000, but less than $100,000, in a fiscal year shall have an audit made in accordance with OMB Circular A–133 or an audit of the Federal program. Institutions and organizations receiving less than $25,000 in any fiscal year are exempt from audit requirements.

*C. Financial Status Report for State Grantees*

Financial Status Reports are required from all State grantees. A Financial Status Report shall be submitted to the Office of the Comptroller for each calendar quarter in which the grant is active. This Report is due even though no obligations or expenditures were incurred. Financial Status Reports shall be submitted to the Office of the Comptroller, by the State grantee, within 45 days after the end of each subsequent calendar quarter. Calendar quarters end March 31, June 30, September 30, and December 31. A Final Financial Status Report is due 90 days after the end of the VOCA grant period, no later than December 31.

*D. Termination of Advance Funding to State Grantees*

If the State grantee receiving cash advances by Letter of Credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, OJP may terminate advance funding and require the State grantee to finance its operations with its own working capital. Payments to the State grantee will then be made by the direct Treasury check method, which reimburses the State grantee for actual cash disbursements.

*E. Administrative Cost Provision Documentation*

State grantees who choose to use a portion of their VOCA victim assistance grant for administrative costs must maintain a clear audit trail of all costs supported by administrative funds and be able to document the value of the State grantee's previous commitment to administering VOCA.

**Monitoring**

*A. Office of the Comptroller*

The Office of the Comptroller conducts periodic reviews of the financial policies, procedures, and records of VOCA grantees and subrecipients. Therefore, upon request, State grantees and subrecipients must give authorized representatives the right to access and examine all records, books, papers, case files, or documents related to the grant, the use of administrative funds, and all subawards.

*B. Office for Victims of Crime*

Beginning with the FY 1991 grant period, OVC implemented an on-site monitoring plan in which each State grantee is visited a minimum of once every three years. While on site, OVC personnel will expect to review various documents and files such as (1) financial and program manuals and procedures governing the VOCA grant program; (2) financial records, reports, and audit reports for the State grantee and all VOCA subrecipients; (3) the State grantee's VOCA application kit, procedures, and guidelines for subawarding VOCA funds; and (4) all other State grantee and subrecipient records and files.

In addition, OVC will visit selected subrecipients and will review similar documents such as (1) financial records, reports, and audit reports; (2) policies and procedures governing the organization and the VOCA funds; (3) programmatic records of victims' services; and (4) timekeeping records and other supporting documentation for costs supported by VOCA funds.

**Suspension and Termination of Funding**

If, after notice and opportunity for a hearing, OVC finds that a State grantee has failed to comply substantially with VOCA, the M7100.1D, the Final Program Guidelines, or another implementing regulation or requirements, OVC may suspend or terminate funding to the State grantee and/or take other appropriate action. At such time, State grantees may request a hearing on the justification for the suspension and/or termination of VOCA funds. VOCA subrecipients, within the State, may not request a hearing at the Federal level. However, VOCA subrecipients who believe that the State grantee has violated a program and/or financial requirement are not precluded from bringing the alleged violation(s) to the attention of OVC.

**Aileen Adams,**

*Director, Office for Victims of Crime, Office of Justice Programs.*

[FR Doc. 95–11368 Filed 5–9–95; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

May 4, 1995.

The Department of Labor has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act (44 U.S.C.

Chapter 35) of 1980, as amended (Pub. L. 96–511). Copies may be obtained by calling the Department of Labor Departmental Clearance officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the ICRs listed below should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OAW/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 10325, Washington, DC 20503 (202) 395–7316. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

*Type of Review:* New.

*Agency:* Employment and Training Administration.

*Title:* Short-Time Compensation Survey of States and Employers.

*OMB Number:* None.

*Frequency:* One-time.

*Affected Public:* Business or other for-profit; State, Local or Tribal Government.

| Survey | Respondents | Average time per respondent | Total |
|---|---|---|---|
| Employer STC Users | 500 | 40 minutes | 334 |
| Employer STC Non-users | 250 | 20 minutes | 83 |
| States with STC | 18 | 120 minutes | 36 |
| States without STC | 35 | 45 minutes | 26 |
| Total burden hours: | 479 | | |

*Description:* Information is needed on attitudes and uses of short-time compensation (STC) programs by States and employers. This information will be analyzed as part of an evaluation of the STC program.

**Theresa M. O'Malley,**

*Acting Departmental Clearance Officer.*

[FR Doc. 95–11463 Filed 5–9–95; 8:45 am]

BILLING CODE 4510–30–M

## Privacy Act of 1974; Publication of a New System of Records; Amendment of an Existing System

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

**ACTION:** Notice of a New Systems of Records; amendment of an existing system of records.

**SUMMARY:** The Privacy Act of 1974 requires that each agency publish notice of all of the systems of records that it maintains. This document adds a new system of records to this Department's current systems of records. With the addition of this new system of records, the Department will be maintaining 141 systems of records. The Department also hereby amends an existing system of records, with respect to the Purpose category, to clarify that these records are used for statistical research and to evaluate the DOL Flexiplace Pilot Programs. Finally, the categories for System Location and for System Manager and Address are amended.

**DATES:** Persons wishing to comment on this new systems of records may do so by June 19, 1995.

**EFFECTIVE DATE:** Unless there is a further notice in the **Federal Register** this new system of records will become effective on July 5, 1995. The amendments to DOL/OASAM–31 are administrative (non-substantive), and therefore, will become effective on May 10, 1995.

**ADDRESSES:** Written comments may be mailed or delivered to Robert A. Shapiro, Associate Solicitor, Division of Legislation and Legal Counsel, 200 Constitution Avenue, N.W., Room N–2428, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, N.W., Room N–2428, Washington, DC 20210, telephone (202) 219–8188.

**SUPPLEMENTARY INFORMATION:** Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), hereinafter referred to as the Act, the Department hereby publishes notice of a new system of records currently maintained pursuant to the Act. This document supplements this Department's last publication in full of all of its Privacy Act systems of records. On September 23, 1993, in Volume 58 at Page 49548 of the **Federal Register**, we published a notice of all 138 systems of records which were maintained under the Act. Of those 138 systems, there were 37 new systems. On April 25, 1994 (59 FR 18156) the Department published two new systems, which brings the total of system of records to 140.

1. The new system presented herein is entitled DOL/ILAB–1, Arbitrators/Experts/Consultant Candidates' Bigoraphies. The system contains biographies of arbitrators, experts and consultant candidates who are nominated or selected for positions for the U.S. National Administrative Office or for the Secretariat for the North American Agreement on Labor Cooperation (NAALC) which is a supplement to the North American Free Traded Agreement (NAFTA).

2. The Department also hereby amends an existing system of records, with respect to the purpose category, to clarify that these records are used for statistical research and to evaluate the DOL Flexiplace Pilot Programs. Finally, the categories for System Location and for System Manager and Address are amended.

### Universal Routine Uses

In its September 23, 1993 publication, the Department gave notice of eleven paragraphs containing routine uses which apply to all of its systems of records, except for DOL/OASAM–5 and DOL/OASAM–7. These eleven paragraphs were presented in the General Prefatory Statement for that document, and it appeared at Pages 49554–49555 of Volume 58 of the **Federal Register**. Those eleven paragraphs were republished in an April 15, 1994 document in order to correct grammatical mistakes in the September 23, 1993 version. At this time we are republishing the April 15, 1994 version of the General Prefatory Statement as a convenience to the reader of this document. This republication will correct a typographical error in paragraph 8 of the General Prefatory Statement whereby the word ''identity'' is corrected to read ''identify''.

The public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on this new system. A report on this new system has been provided to OMB and to the Congress as required by OMB Circular A–130, Revised, and 5 U.S.C. 552a(r).

**General Prefatory Statement**

The following routine uses apply to and are incorporated by reference into each system of records published below unless the text of a particular notice of a system of records indicates otherwise. These routine uses do not apply to DOL/OASAM–5 Rehabilitation and Counseling File nor to DOL/OASAM–7—Employee Medical Records.

1. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

3. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

4. A record from this system of records may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

6. Disclosure may be made to agency contractors, or their employees, consultants, grantees, or their employees, or volunteers who have been engaged to assist the agency in the performance of a contract, service, grant, cooperative agreement or other activity related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; see also 5 U.S.C. 552a(m).

7. The name and current address of an individual may be disclosed from this system of records to the parent locator service of the Department of HHS or to other authorized persons defined by Public law 93–647 for the purpose of locating a parent who is not paying required child support.

8. Disclosure may be made to any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

9. Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.

10. A record from any system of records set forth below may be disclosed to the Office of Management and Budget in connection with the review of private relief, legislative coordination and clearance process.

11. Disclosures may be made to a debt collection agency that the United States has contracted with for collection services to recover debts owed to the United States.

## I. Publication of a New System of Records

### DOL/ILAB–1

**SYSTEM NAME:**

Arbitrators/Experts/Consultant Candidates' Biographies.

**SECURITY CLASSIFICATION:**

Unclassified

**SYSTEM LOCATION:**

U.S. National Administrative Office, U.S. Department of Labor, Bureau of International Labor Affairs, Room C–4327, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who applied, are nominated or are selected to serve as arbitrators, experts, advisors, consultants, contractors or similar positions for the U.S. National Administrative Office or the Secretariat for the North American Agreement on Labor Cooperation (NAALC), the supplemental agreement on labor issues to the North American Free Trade Agreement (NAFTA).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Application and nomination letters; resumes, biographical sketches, curriculum vitae, and other related documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

North American Agreement on Labor Cooperation Articles 23, 28, and 30; 58 FR 69410; and 5 U.S.C. 301.

**PURPOSE:**

These records are established when individuals nominate themselves or are recommended for appointments as arbitrators, experts, consultants, contractors, advisory committee members or similar positions with the U.S. National Administrative Office or the Secretariat for the NAALC. The records are used by the Deputy Under Secretary of Labor for International Affairs to make selections or recommendations as appropriate to the

Secretary of Labor or Executive Director of the Secretariat for appointment.

**ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

None, except for those uses listed in the General Prefatory Statement to this document.

**DISCLOSURES TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS OF THE SYSTEM:**

**STORAGE:**

Manual files and computer disk.

**RETRIEVABILITY:**

By Nominee's name and by selected skills categories.

**SAFEGUARDS:**

Locked storage equipment and personnel screening.

**RETENTION AND DISPOSAL:**

a. Advisory committee members, arbitrators, contractors, consultants, and experts: Permanent transfer to National Archives three (3) years after expiration of term of service.

b. Nominees not selected: destroy files when five (5) years old.

**SYSTEM MANAGER(S) AND ADDRESS:**

Secretary, U.S. National Administrative Office, U.S. Department of Labor, Bureau of International Labor Affairs, Room C–4327, Washington, D.C. 20210.

**NOTIFICATION PROCEDURES:**

Individuals wishing to gain access to non-exempt records should contact the system manager at the system location above.

**RECORD ACCESS PROCEDURES:**

A request for access shall be addressed to the system manager at the address listed above. Individuals must furnish the following information for their records to be located and identified:

a. Name;

b. Approximate date for investigation;

c. Individuals requesting access must also comply with the Privacy Act regulations regarding verification of the identity to records at 29 CFR 70a.4.

**CONTESTING RECORDS PROCEDURES:**

A petition for amendments shall be addressed to the System Manager and must meet the requirements of 29 CFR 70a7.

**RECORD SOURCE CATEGORIES:**

Nominations submitted by individuals within the system, other individuals and organizations and by government agencies.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Not applicable.

## II. Publication of an Amendment

DOL/OASAM–31, DOL Flexible Workplace (Flexiplace) Pilot Programs Evaluation and Files, is amended by revising three categories, System Location, Purpose, and System Manager and Address, to read as follows:

### DOL/OASAM–31

**SYSTEM NAME:**

DOL Flexible Workplace (Flexiplace) Pilot Programs Evaluation and Files.

* * * * *

**SYSTEM LOCATION:**

DOL/OASAM/Office of Human Resources, Office of Human Resource Systems.

* * * * *

**PURPOSE(S):**

These records are used for statistical research and to evaluate the DOL Flexiplace Pilot Programs.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, Office of Human Resources, Office of Human Resource Systems, Room N–5470, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210.

Signed at Washington, DC, this 5th day of May 1995.

**Robert B. Reich,**

*Secretary of Labor.*

[FR Doc. 95–11462 Filed 5–9–95; 8:45 am]

BILLING CODE 4510–23–M

---

## Pension and Welfare Benefits Administration

**[Application No. D–09872, et al.]**

## Proposed Exemptions; T.J. Lambrecht Construction, Inc. et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of

the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**T.J. Lambrecht Construction, Inc., Employees' Profit Sharing Plan and Trust (the TJLC Plan); Brown & Lambrecht Earthmovers, Inc. Employees' Profit Sharing Plan and Trust (the B&L Plan; collectively referred to as the Plans)**

Located in Joliet, Illinois

[Application Nos. D–09872 and D–09873]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by each of the Plans of a 12.5% partnership interest in Prime Industries (the Partnership Interest) to Mr. Thomas J. Lambrecht (Mr. Lambrecht), a party in interest with respect to the Plans; provided the following conditions are satisfied: (1) The Sale is a one-time transaction for cash; (2) the sale price for each Partnership Interest will be the higher of (a) the fair market value of the Partnership Interest as determined by a qualified independent appraiser at the time of the Sale or, (b) each Plan's total investment in the Partnership Interest ($300,000); and (3) the Plans do not suffer any loss nor incur any expenses in connection with the transaction.

*Summary of Facts and Representations*

1. The Plans are defined contribution profit sharing plans. As of December 31, 1994, the TJLC Plan had 48 participants and $1,472,427.00 in assets. As of September 30, 1994, the B&L Plan had 29 participants and $6,253,423.00 in assets. T.J. Lambrecht Construction, Inc. and Brown & Lambrecht Earthmovers, Inc. (the Employers) are Illinois subchapter S corporations in the business of earthmoving and road construction. Mr. Lambrecht is the sole trustee of the TJLC Plan and co-trustee (with Mr. Paul Lambrecht) of the B&L Plan. Mr. Lambrecht is also the sole shareholder and sole director of both Employers.

2. The Plans purchased the Partnership Interests in Prime Industries from Lennon Wallpaper Company in 1991. The total purchase price of each Partnership Interest was $258,750.00. The applicant represents that both Lennon Wallpaper Company and Prime Industries are unrelated to the Employers. Prime Industries' only asset is a 300,000 square foot steel building on 15.6 acres located in Shorewood, Illinois (the Partnership Property). From 1991 through September 30, 1994, each Plan advanced additional funds in the amount of $125,000.00 for improvements to the Partnership Property. The applicant represents that, during this same time period, the Partnership Property generated income for each Plan in the amount of $83,750.00. The applicant also represents that the Partnership Property continues to generate income for the Plans in the form of rental payments from tenants who are not related to the Plans or the Employers. In addition, it is represented that the Partnership Interest currently represents 25.47% of the TJLC Plan's assets and 6% of the B&L Plan's assets.[1]

3. The applicant represents that, because the Partnership Interests are minority interests and because the interests are not publicly traded, there is not an established market for the Partnership Interests. Furthermore, it is represented that the Partnership Property is the only asset owned by the partnership. The applicant represents that, for the foregoing reasons, the interests are valued according to the proportionate value of the underlying property. In this regard, the applicant submitted a letter prepared by Charles Sharp, a general partner of the partnership, in which Mr. Sharp explained that the sole value of the Partnership Interests is the value of the Partnership Property itself and that the Partnership Interests have no value in and of themselves.

4. The applicant represents that Brown & Lambrecht Earthmovers, Inc. was merged into T.J. Lambrecht Construction, Inc. on January 1, 1995. As a result, the B&L Plan is in the process of being terminated. In addition, the TJLC Plan is being terminated and T.J. Lambrecht Construction, Inc. is in the process of establishing a new profit sharing plan which will allow for participant-directed investments. The applicant requests an exemption to permit the Sale by the Plans of the Partnership Interests to Mr. Lambrecht. Each Plan will receive the greater of (1) the fair market value of the Partnership Interest as determined by an independent appraiser at the time of the Sale, or (2) the Plan's total investment in the Partnership Interest. The applicant represents that this Sale is in the best interests of Plan participants and beneficiaries because it will allow the Plans to convert the Partnership Interests into cash, creating the liquidity needed for distributions to participants who, at their election, have the right to roll over their Plan benefits into the new profit sharing plan. It is also represented that the Sale will facilitate implementation of participant-directed investment of accounts in the new profit sharing plan.

5. The Property was appraised by Mr. Joseph Batis, MAI, a State of Illinois Certified General Real Estate Appraiser who is independent of the Plans, the Employers, and Mr. Lambrecht. In analyzing the value of the Partnership Property, Mr. Batis stated that he relied mainly on the direct sales comparison approach but also considered the cost approach and the income approach to estimate the value of the property. The appraised value of the Partnership Property as of September 30, 1994 was $4,000,000.00. The ratable value of each Plan's 12.5% interest in the Partnership Property as of that date was $500,000.00.[2]

6. The applicant represents that the Plans would incur no expenses or commissions with respect to the Sale. The applicant also represents that the proposed transaction is administratively feasible and protective of the Plans' participants and beneficiaries. Finally, the applicant represents that the proposed transaction will provide the Plans with the liquidity needed to fund participant-directed investments and cash distributions to Plan participants.

7. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) The Sale will be a one-time transaction for cash; (2) no

[1] The Department notes that the decisions to acquire and hold the Interests are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the Interests by the Plans.

[2] The applicant represents that the fair market value of the Partnership Interests will not be discounted for lack of marketability, or for any other reason.

commissions or fees will be paid by the Plans as a result of the Sale; (3) the Sale will enable the Plans to liquidate their assets and will facilitate implementation of participant-directed investments; and (4) the Sale price will be the higher of: (a) The fair market value of the Partnership Interest on the date of the Sale, or (b) the Plan's total investment in the Partnership Interest.

**FOR FURTHER INFORMATION CONTACT:** Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

**Pediatric Dentistry Ltd. Profit Sharing Trust (the Plan),**

Located in Fargo, North Dakota

[Exemption Application No. D–09903]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code[3] shall not apply to the proposed cash sale of a parcel of improved real property (the Property) by the Plan to William Hunter, M.D. (Dr. Hunter), a party in interest with respect to the Plan; provided that: (1) The sale will be a one-time transaction for cash; (2) as a result of the sale, the Plan will receive in cash the greater of $79,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (3) the Plan will pay no commissions, fees, or other expenses as a result of the transaction; and (4) the terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.

*Summary of Facts and Representations*

1. The Plan is a defined contribution profit sharing plan sponsored by Pediatric Dentistry Ltd. (the Employer). As of November 29, 1994, there were seven (7) participants. As of November 17, 1994, the assets of the Plan totaled approximately $1,295,866. Approximately seven percent (7%) of the Plan's assets are invested in the Property. Northern Capital Trust Company is the trustee (the Trustee) of the Plan. Dr. Hunter is the administrator of the Plan.

2. The Employer which sponsors the Plan is a professional service corporation providing dental services. The Employer's business office is located in a residential area immediately adjacent to the Property. Dr. Hunter is the sole shareholder of the Employer.

3. In 1989, the Property was purchased at a price of $67,500 from third parties unrelated to Dr. Hunter or to any other beneficiary of the Plan. It is represented that one of the factors contributing to the purchase was the view that eventually the Property would be needed for the Employer's business and would at that time satisfy the definition of ''qualifying employer real property,'' as set forth in section 407(d)(4) of the Act.[4]

However, it is represented that since the acquisition by the Plan, the Property has been rented to various parties unrelated to Dr. Hunter or to any other beneficiary of the Plan. It is represented that the annual average return on the investment to the Plan since the Property was acquired in 1989, has been 4.31%.

4. The Property is described as a one-story detached single family residence on a corner lot in a newer diversified neighborhood in Fargo, North Dakota. The Property consists of an 8,447 square foot level site improved by a structure that contains a 1,253 square foot finished living area above grade and a basement of the same size below grade. The Property is located at 1206 15 Avenue South and is situated on the lot adjacent to the Employer's business office.

5. This exemption is requested to permit the Plan to sell the Property to Dr. Hunter for the greater of $79,000 or the appraised fair market value of the Property on the date of sale. Dr. Hunter represents that beginning in April, 1992, the Property was listed with a local realtor as part of the multiple listing service. The Property was initially listed at a price of $71,950 which it is represented reflected the fair market value of the Property at that time based on an appraisal. Subsequently, the price of the Property was reduced to $68,950. Though the Property was shown to prospective buyers by several realtors who participate in the multiple listing service, it is represented that the Plan did not receive any offers from those buyers to purchase the Property.

It is represented that the proposed transaction is feasible in that it involves a one-time sale of the Property for cash. In addition, the proposed transaction is in the interest of the Plan in that the price offered by Dr. Hunter could not be obtained otherwise. In addition, the Plan will be able to sell the Property without incurring any further expense of searching for a buyer and without paying brokerage commissions, fees, or other expenses as a result of the transfer. The Trustee is desirous of selling the Property, which is illiquid, in order to facilitate the establishment of participant directed individual accounts in the Plan. It is anticipated that once the Property is sold the cash proceeds would be invested in marketable securities.

In the opinion of the Trustee, the proposed transaction is protective of the participants and beneficiaries of the Plan in that the sales price would be based on the fair market value of the Property as determined by an independent, qualified appraiser, as of the date of the sale. Further, the Trustee will review the transaction and make the final determination regarding the sale of the Property to Dr. Hunter. In this regard, the Trustee represents that in its fiduciary capacity with respect to the Plan, it will review the contemplated transaction so as to insure that the interests of the participants of the Plan are protected.

6. An appraisal of the Property was prepared by Jerry Link (Mr. Link), of Appraisal Services, Inc., in Fargo, North Dakota. It is represented that Mr. Link is qualified in that he is licensed by the State of North Dakota as an appraiser. It is further represented that he is independent in that he has no present or prospective interest in the Property and has no personal interest or bias with respect to the participants in the proposed transaction. Mr. Link represents that neither his employment nor his compensation was conditioned upon the appraised value of the Property, nor was he required to report a predetermined value or base the appraisal on a requested minimum value for the Property. After physically inspecting the Property, and reconciling values for the Property established by the cost approach, income approach, and sales comparison approach, Mr. Link determined that the fair market

[3] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[4] The Department notes that the decisions of the fiduciary, acting on behalf of the Plan, in connection with the acquisition and holding of the Property are governed by the fiduciary responsibility requirements of part 4, subpart B, of Title I. The Department expresses no opinion herein, as to whether any of the relevant provisions of part 4, subpart B, of title I have been violated regarding the Plan's investment in and subsequent holding of the Property, and no exemption from such provisions is proposed herein.

value of the Property was $79,000, as of January 13, 1994.

Because the Property is located on the lot adjacent to the Employer's business office, Mr. Link was asked to determine whether there would be any premium value associated with the Property. In this regard, Mr. Link indicated that the Property is a single family dwelling located in an R–l, One/Two Family Dwelling District. It is represented that this zoning category does not allow commercial development without a special use permit. According to Mr. Link the highest and best use of the Property is single family. Based on this highest and best use, it is the opinion of Mr. Link that the Property's location next to the Employer's business office does not result in a premium associated with the value of the Property to Dr. Hunter.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) the sale of the Property will be a one-time transaction for cash; (b) as a result of the sale, the Plan will receive in cash the greater of $79,000 or the fair market value of the Property, as determined by an independent, qualified appraiser, as of the date of the sale; (c) the Plan will pay no commissions, fees, or other expenses as a result of the transaction; (d) the terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties; (e) the Plan will be able to invest the proceeds from the sale of the Property in marketable securities; (f) the Plan will be able to dispose of the Property which is illiquid; and (g) the sale of the Property will facilitate the establishment of participant directed individual accounts in the Plan.

**FOR FURTHER INFORMATION CONTACT:** Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

## Bob Murphy, Inc. Profit Sharing Plan (the Plan)

Located in Boynton Beach, Florida

[Exemption Application No. D–09949]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of certain works of art (the Art Work) by the Plan to Robert J. Murphy, Jr., a disqualified person with respect to the Plan.[5]

This proposed exemption is conditioned upon the following requirements: (1) all terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (2) the Sale is a one-time cash transaction; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the Sale; and (4) the Plan receives a sales price equal to the fair market value of the Art Work on the date of the Sale as determined by an independent, qualified appraiser.

*Summary of Facts and Representations*

1. The Plan is a profit sharing Plan whose only participants are Mr. Murphy and his wife, Gail F. Murphy. As of June 30, 1994, the Plan had total assets of $572,050. Mr. and Mrs. Murphy serve as the trustees of the Plan (the Trustees) and have sole investment discretion with respect to its assets.

2. The Plan has approximately 17 percent of its assets in the Art Work, which consists of ten Leroy Nieman serigraphs. The Plan received the Art Work as a rollover from the Bob Murphy, Inc. Defined Benefit Pension Plan (the DB Plan), which the trustees terminated on November 15, 1987. The DB Plan purchased the Art Work between 1980 and 1987 from two dealers—Hammers Gallery in New York and Hanson Gallery in New Orleans. Mr. Murphy represents that he is independent of, and unrelated to, both Hammers Gallery and Hanson Gallery.

3. Following its acquisition, the Art Work has been in the possession of Mr. Murphy at his residence at Delray Beach, Florida and his office at the Delray Dunes Country Club in Boynton Beach, Florida. In an examination report dated January 6, 1993, the Internal Revenue Service (the Service) determined that Mr. and Mrs. Murphy had engaged in prohibited transactions by reason of their use of the Art Work for the years 1989, 1990 and 1991. Mr. Murphy represents that on August 22, 1994 he filed Forms 5330 with the Service and paid the applicable excise taxes associated with the past prohibited transaction in the amount of $9,195.

4. Because the Art Work is not an income producing asset for the Plan and certain pieces of the Art Work have declined in value, Mr. Murphy proposes to purchase the Art Work from the Plan for a cash amount equal to its fair market value on the date of the Sale. Accordingly, Mr. Murphy requests an administrative exemption from the Department to permit his purchase of the Art Work from the Plan under the terms and conditions described herein.

5. Celeste B. Stover, the Assistant Director for Hanson Gallery in New Orleans, Louisiana, valued the Art Work as of August 10, 1994. In her capacity as Assistant Director, Ms. Stover has actively represented the work of Leroy Nieman since 1983. Ms. Stover represents that while Mr. Murphy has been a client of the Hanson Gallery since 1984, both she and Hanson Gallery are unrelated to, and independent of, Mr. and Mrs. Murphy. Ms. Stover states that she derives less than 1 percent of her annual income from Mr. Murphy.

In determining the fair market value of the Art Work, Ms. Stover represents that she looked to the recommended retail values of Leroy Nieman serigraphs provided yearly to Hanson Gallery by Knoedler and Co., the publishers of Leroy Nieman's prints. The recommended values are based upon current demand for the specific image as well as availability of the image and previous bids within the last year. Ms. Stover's valuations of the Art Work are as follows:

| Work | Fair Market Value |
|---|---|
| Rush Street Bar | $6,500 |
| Elephant Nocturne | 10,000 |
| New York Stock Exchange | 15,000 |
| P.J. Clarkes | 15,000 |
| Buena Vista Bar | 8,000 |
| Harry's Wall Street Bar | 7,000 |
| Bistro Gardens | 6,800 |
| Polo Lounge | 11,000 |
| Bar at 21 | 7,000 |
| Fix McRory's Whiskey Bar | 12,000 |

6. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) All terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction between unrelated parties; (b) the Sale will be a one-time cash transaction; (c) the Plan will not be required to pay any commissions, costs

[5] Since Robert J. Murphy, Jr. and his wife, Gail F. Murphy, are the only participants in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

or other expenses in connection with the Sale; (d) the Plan will receive a sales price equal to the fair market value of the Art Work based on a determination by an independent, qualified appraiser.

**Notice to Interested Persons**

Since Mr. and Mrs. Murphy are the only participants in the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments are due within thirty days after publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

**The Brown Group, Inc., 401(k) Savings Plan (the Plan),**

Located in St. Louis, Missouri

[Application No. D–09951]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed guarantee (the Guarantee) by The Brown Group, Inc. (the Employer), the sponsor of the Plan, of amounts due the Plan with respect to a guaranteed investment contract issued by Confederation Life (Confederation Life), including the Employer's potential cash advances to the Plan (the Advances) pursuant to the Guarantee and the potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Advances are made in lieu of amounts due the Plan under the terms of the GIC;

(C) The Repayments are restricted to cash proceeds actually received by the Plan from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC, or from the sale or transfer of the GIC to unrelated third parties (the GIC Proceeds), and no other Plan assets are used to make the Repayments; and

(D) The Repayments will be waived to the extent the Advances exceed the GIC Proceeds.

*Summary of Facts and Representations*

1. The Plan is a defined contribution plan which includes a cash or deferred arrangement under section 401(k) of the Code, and which provides for employer matching contributions and additional employer discretionary contributions. As of December 31, 1994 the Plan had approximately 2,500 participants and total assets of approximately $44,937,281. The trustee of the Plan is Boatmen's Trust Company (the Trustee), located in St. Louis, Missouri. The Employer, a New York publicly-traded corporation, is engaged in the manufacture, import and retail sales of shoes, with its corporate headquarters in St. Louis, Missouri.

2. The Plan provides for individual participant accounts (the Accounts) and for participant-directed investment of each Account. Plan participants direct investment of their Accounts among four investment options (the Funds), and may reallocate their Account balances among the Funds on a periodic basis. The Funds include a guaranteed interest fund (the G.I. Fund), which invests in guaranteed investment contracts issued by insurance companies.

3. Among the assets of the G.I. Fund is the GIC, a guaranteed investment contracts issued to the Plan in 1992 by Confederation Life Insurance Company (Confederation Life), a Canadian insurance company doing business in the United States. The GIC is a single-deposit, benefit-responsive contract, principal amount $1,000,000, earning interest at a guaranteed annual rate of 7.15% (the Contract Rate). The GIC's terms enable the G.I. Fund to make monthly withdrawals (the Withdrawals) to effect, in accordance with the terms of the Plan, benefit distributions, in-service withdrawals, participant Advances, and participant-directed transfers of Account balances to other Funds offered by the Plan (the Withdrawal Events). Interest at the Contract Rate is credited daily, calculated on the balance remaining deposited under the GIC. If interest earned under the GIC exceeds the amount withdrawn, the difference is paid annually (the Interest Payments) on December 31. All Interest Payments were made when due through December 31, 1993. The terms of the GIC also require Confederation Life to make a final payment to the Plan on December 12, 1996 (the Maturity Payment) in the amount of the GIC's total principal deposits plus interest earnings at the Contract Rate less previous withdrawals (Accumulated Book Value) as of such date. As of July 31, 1994, the GIC had an Accumulated Book Value of $1,034,447.59.

4. Commencing August 1, 1994 (the Receivership Date), insurance regulatory authorities in Canada and the state of Michigan instituted proceedings to place Confederation Life in receivership (the Receivership).[6] Consequently, Confederation Life's assets and operations are frozen, and payments on all its guaranteed investment contracts, including the GIC held by the Plan, were suspended effective as of the Receivership Date. Since the commencement of the Receivership, the Plan has been unable to make withdrawals from the GIC to fund Withdrawal Events with respect to Account balances invested in the GIC, and the Employer represents that it is uncertain whether, or to what extent, the Plan will receive any GIC payments or withdrawals to enable funding of future Withdrawal Events. Additionally, the Employer represents that it is uncertain whether and to what extent the Maturity Payment under the GIC will be paid. The Employer desires to alleviate the G.I. Fund of risks associated with investments in the GIC, and to enable the G.I. Fund to fully fund the Withdrawal Events with respect to Account balances invested in the G.I. Fund. Accordingly, the Employer proposes to guarantee (the Guarantee) that the Plan will recover all amounts due under the GIC, and in its discretion to make advances to the Plan (the Advances) pursuant to the Guarantee. The Employer requests an exemption for the Guarantee and the Advances, as well as the potential repayment of the Advances (the Repayments), under the terms and conditions described herein.

5. The Employer and the Trustee will execute a written agreement embodying all the terms and conditions of the Guarantee, the Advances and the Repayments (the Agreement).

*The Guarantee:* The Guarantee is the Employer's undertaking to insure that in the eventual resolution of the Receivership, the Plan recovers a total amount with respect to the GIC which is no less than its investment in the GIC as of the Receivership Date, plus interest thereafter at the Contract Rate. Accordingly, the amount which the Employer guarantees under the

[6] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

Agreement (the Guaranteed Amount) is the Receivership Date Accumulated Book Value of the GIC, which is $1,034,447.59, less the sum of GIC Proceeds (cash proceeds actually received by the Plan from Confederation Life or any other entity making payment with respect to Confederation Life's obligations under the terms of the GIC, or from the sale or transfer of the GIC to unrelated third parties) and Advances under the Agreement as described below, plus interest on the net of the foregoing amount after the Receivership date at the Contract Rate of 7.15 percent.

*The Advances:* On the monthly occasions when the Employer, as Plan administrator, would otherwise request a withdrawal from the GIC to fund Withdrawal Events with respect to Account balances invested in the GIC, the Employer will instead notify the Trustee of the requested withdrawal amount. The Trustee will then determine whether it can satisfy the withdrawal request by using the assets in the G.I. Fund other than the GIC. If the Trustee determines that the funds available from the G.I. Fund are insufficient to honor the withdrawal request, the Trustee will determine the amount of additional funds necessary to honor the withdrawal request, and the Employer will make an Advance in that amount to the Plan. Valuation of the Account balances invested in the GIC for purposes of the Advances will be based on the Guaranteed Amount as described above.

*Final Advance:* The Agreement provides for a final Advance after the completion of the Receivership. After the Trustee has determined that the Plan will not receive any further proceeds from Confederation Life or its successors with respect to the GIC, the Employer shall make a final Advance to the Plan in the amount necessary to enable the Plan's recovery of the Guaranteed Amount. In the event the Receivership extends beyond the year 2000, the Employer will make the final Advance on the first business day in the year 2001 in the amount required on such date to enable the Plan to recover the Guaranteed Amount.

*The Repayments:* The Agreement provides that the Repayments of the Advances are restricted to the principal amounts of the Advances, and the Plan will pay no interest and will incur no expenses with respect to the Advances. The Repayments may be made only from the GIC Proceeds received by the Plan. No other Plan assets will be available for the Repayments. If the GIC Proceeds are not sufficient to repay fully the Advances, the Agreement provides that the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives GIC Proceeds in excess of the total amount of the Advances, such additional amounts will be retained by the Plan and allocated among the Accounts invested in the G.I. Fund.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Advances enable the Plan to resume the full funding of the Withdrawal Events; (2) The Advances will protect the Plan's investment in the GIC and will ensure that the Plan will recover all amounts due under the terms of the GIC; (3) The Plan will pay no interest or incur any expenses with respect to the Advances; (4) Repayment of the Advances will be made only from GIC Proceeds and no other Plan assets will be involved in the transactions; (5) Repayment of the Advances will be waived to the extent the Plan recoups less from the GIC Payors than the total amount of the Advances; and (6) In the event the Plan receives GIC Proceeds in excess of the Guaranteed Amount, such amounts will be retained by the Plan and allocated among the Accounts.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department (202) 219–8881. (This is not a toll-free number.)

## General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

**Ivan Strasfel,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 95–11536 Filed 5–9–95; 8:45 am]

BILLING CODE 4510–29–P

---

## UNITED STATES NUCLEAR REGULATORY COMMISSION

### Biweekly Notice

### Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 17, 1995, through April 28, 1995. The last biweekly notice was published on April 26, 1995.

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 9, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of amendment request:* April 5, 1995

*Description of amendment request:* The licensee proposes to revise Technical Specification (TS) 3/4.9, Refueling Operations, to be consistent with NUREG-1431, Standard Technical Specifications, Westinghouse Plants, and to relocate the applicable sections from the TS that do not meet the Commission's screening criteria for retention.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change does not involve a significant hazards consideration for the following reasons:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will have no significant impact on the safety, reliability, or operation of fuel handling equipment or activities. These changes will simplify the Technical Specifications and implement the recommendations of the Commission's Final Policy Statement on Technical Specification Improvements based upon the assumptions and analyses contained in the bases of NUREG-1431. Those elements that involve relocations to plant procedures are administrative in nature and do not involve any modifications to plant equipment or operation. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any new equipment or require existing equipment to operate to perform a function different from that previously evaluated in the Final Safety Analysis Report or Technical Specifications. The changes are consistent with the new Standard Techical Specification and assumptions contained in NUREG-1431 and in the Commission's Final Policy Statement on Technical Specification Improvements. Therefore, the proposed changes would not increase the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes do not affect any of the parameters which relate to the margin of safety as described in the [Bases] of the Technical Specifications or the Final Safety Analysis Report. Accordingly, NRC Acceptance Limits are not affected by these changes. For those specifications being relocated to other plant documents, these changes are purely administrative. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

*NRC Project Director:* David B. Matthews

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois**

*Date of application for amendment request:* September 15, 1992, as supplemented April 21, 1995

*Description of amendment request:* As a result of findings by a Diagnostic Evaluation Team inspection performed by the NRC staff at the Dresden Nuclear Power Station in 1987, Commonwealth Edison Company (ComEd, the licensee) made a decision that both the Dresden Nuclear Power Station and sister site Quad Cities Nuclear Power Station, needed attention focused on the existing custom Technical Specifications (TSs).

The licensee made the decision to initiate a Technical Specification Upgrade Program (TSUP) for both Dresden and Quad Cities. The licensee evaluated the current TSs for both Dresden and Quad Cities against the Standard Technical Specifications (STSs) contained in NUREG-0123, ''Standard Technical Specifications General Electric Plants BWR/4.'' The licensee's evaluation identified numerous potential improvements such as clarifying requirements, changing TSs to make them more understandable and to eliminate interpretation, and deleting requirements that are no longer considered current with industry practice. As a result of the evaluation, ComEd has elected to upgrade both the Dresden and Quad Cities TSs to the STSs contained in NUREG-0123.

The TSUP for Dresden and Quad Cities is not a complete adaption of the STSs. The TSUP focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operations and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TSs based on the licensee's responses to Generic Letters (GLs), and (4) relocating specific items to more appropriate TS locations.

The application dated September 15, 1992, as supplemented April 21, 1995, proposed to upgrade only Sections 2.0 (Safety Limits and Limiting Safety System Settings), 3/4.11 (Power Distribution Limits), and 3/4.12 (Special Test Exceptions) of the Dresden and Quad Cities TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

*Section 2.0*

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes to Specifications 1/2.1 and 1/2.2 to delete the present Applicability and Objective sections represent administrative changes to format and presentation of material. The proposed changes provide the user with a format that will allow better access to needed information and provides concise Safety Limit, Limiting Safety System Settings, Applicability and Action requirements. The additions of Applicability and Action requirements represent clarification of intended requirements that do not presently state all required conditions of operability or provide clearly stated Action statements if the requirements are not met. The combining of the two sections and added requirements follow STS guidelines that are in use at many operating BWRs with similar design and operating configurations as Dresden and Quad Cities Stations. Operability requirements for Safety Limits have been chosen to reflect only those Operational Modes where the Safety Limits apply. Operability requirements for Limiting Safety System Settings are already stated in other sections of the Technical Specifications, thus reference to the appropriate operability requirement is made rather than repeating the requirement in the Limiting Safety System Setting Specification.

Deletion of the Power Transient Safety Limit does not impact any safety analyses. The safety analyses assume the Reactor Protection System (RPS) operates as designed and the reactor scrams when the neutron flux exceeds the limiting safety system setting. The proposed Technical Specifications will continue to provide a highly reliable system to operate as assumed in the safety analyses. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The reactor water level low scram setpoint is changed (for Quad Cities) to be consistent with other reactor water level setpoints in the Technical Specifications and the STS. The setpoint is equivalent to the current requirement but is expressed as the reactor water level above the top of active fuel.

The scram discharge volume scram level is converted for Dresden Unit 2 and Unit 3 to gallons to be consistent with the Quad Cities Units. The proposed setpoints are consistent with the current specifications. The change in the units does not represent a change in the physical setpoint.

The proposed change to delete the APRM Downnscale Scram trip function for Quad Cities has been evaluated by Commonwealth Edison and General Electric and previously approved for Dresden Station. The events of concern with respect to the APRM/IRM companion trip are the Control Rod Drop Accident and the low power Rod Withdrawal Error. The FSAR and reload safety analyses do not credit this scram function in the termination of either of these events. Since this scram function is not credited in the termination of these events, the elimination of this scram function has no adverse effect on previously evaluated accidents.

The change to the low condenser vacuum scram setpoint from 23 inches Hg to 21 inches of Hg is consistent with an identical change made to Quad Cities Units 1 and 2. The low condenser vacuum scram is an anticipatory scram and is not credited in any transient analysis. Thus the reduction in the setpoint will not affect any transient analysis.

The proposed changes do not alter the intent of existing setpoints or accident assumptions and follow existing requirements at other operating BWRs for operability and Action statements. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed administrative changes to the format and arrangement of material do not affect technical requirements or assumptions of any potential accident and; therefore, cannot create the possibility of a new or different kind of accident from any previously evaluated.

The proposed addition of Applicability and Action requirements enhance the understanding and usability of the Technical Specifications and thus represent an improvement over present specifications. New requirements are modeled after those in use at operating BWRs and do not represent requirements that will adversely affect potential accident analyses or assumptions. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Deletion of the Power Transient Safety Limit does not involve a change in the design or operation of any systems assumed to operate in the safety analyses. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change in the units for the Reactor Water Level scram function do not change any physical plant setpoints. The setpoint will remain the same but will be expressed as the level above the top of active fuel. The change does not create the possibility of a new or different kind of accident.

The conversion of the Scram Discharge Volume scram setpoint from inches to gallons does not alter any physical plant setpoints. The setpoint will remain the same but will be expressed in gallons rather than inches. The change will provide consistency between Dresden and Quad Cities.

The deletion of the APRM Downscale Scram Trip Function does not introduce any new accident. The limiting accidents, Control Rod Drop, Rod Withdrawal Error, in the operating region of transition between the Startup and Run Operational Modes are well understood and are evaluated in FSAR and reload analyses. Other control rod initiated events which are less limiting in this region are subsets of the low power Rod Withdrawal Error event and are bounded by it and the design basis Control Rod Drop Accident. General Electric has indicated that, for reactivity insertion mechanisms at very low power, the only effect of the deletion of the APRM downscale scram would be that the initial power level could be a few percent lower which would not have a significant effect on the severity of the event. In addition, proper overlap between the IRMs and APRMs is not affected since the calibration requirements are not being changed.

The change in the low condenser vacuum scram function will not create the possibility of a new or different kind of accident because the function is not recognized in any of the transient analysis. The low condenser vacuum scram function is an anticipatory scram.

The proposed changes do not involve a significant reduction in the margin of safety because:

The proposed administrative changes to format, arrangement of material, clarification of requirements and other non-technical changes do not affect any safety aspects of the plant and as such can not involve a significant reduction in the margin of safety.

The proposed Applicability statements require availability of Safety Limits and Limiting Safety System Settings when required to perform their respective functions. Proposed Actions for Safety Limits allow only 2 hours to be in Hot Shutdown and then reference Specification 6.4 to ensure that proper reports are made and restart is prohibited until approved by the NRC. These provisions help ensure that present margins are not significantly reduced.

Deletion of the Power Transient Safety Limit does not impact the margin assumed in the safety analyses. The safety analyses assume the RPS operates as designed and the reactor scrams when the neutron flux exceeds the limiting safety system setting. The margins assumed in the design of the RPS and in the safety and transient analyses calculations have not been revised. Therefore, this change does not involve a significant reduction in the margin of safety.

The change in units to the Reactor Water Level scram setpoint and the Scram Discharge Volume scram setpoint do not involve a significant reduction in the margin of safety because the changes do not represent a change in the physical setpoints.

The reduction in the Low Condenser Vacuum scram setpoint does not represent a reduction in the margin of safety because the scram is not credited in any transient analysis.

The APRM Downscale Scram Trip Function is not credited in the termination of any FSAR or reload safety analysis event. As such, the elimination of this scram function has no effect on any margin of safety.

*Section 3/4.11*

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed changes represent the conversion of current requirements to a

more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide increased reliability of equipment assumed to operate in the current safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident.

Some of the proposed changes represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These proposed changes are consistent with the current safety analyses and have been previously determined to represent sufficient requirements for the assurance of reliability of equipment assumed to operate in the safety analysis, or provide continued assurance that specified parameters remain within their acceptance limits. As such, these changes will not significantly increase the probability or consequences of a previously evaluated accident.

The Generic Changes to the technical specifications involve administrative changes to format and arrangement of the material. As such, these changes cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

The current specifications require the reactor to be placed in cold shutdown when a thermal limit was exceeded and not restored within the allotted 2 hours, but the proposed specifications require the reactor to be less than 25% of rated thermal power if this condition occurred. The change eliminates a shutdown and requires the power level to be reduced to the point that the limits are no longer applicable.

Therefore, the change will not increase the probability or consequences of an accident.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed changes represent the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. Some of the changes may involve revision in the operation of the stations; however, these changes provide additional restrictions which are in accordance with the current safety analyses, or are to provide for additional testing or surveillance which will not introduce new failure mechanisms beyond those already considered in the current safety analyses. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the Generic Changes proposed to the technical specifications are administrative in nature, they cannot create the possibility of a new or different kind of accident from any previously evaluated.

The requirement to reduce thermal power to less than 25% of rated thermal power rather than place the reactor in cold shutdown will not create a new or different kind of accident because the thermal limits are not required in operational mode 1 when thermal power is less than 25% of rated power.

Involve a significant reduction in the margin of safety because:

In general, the proposed changes represent the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. Some of the latter individual items may introduce minor reductions in the margin of safety when compared to the current requirements. However, other individual changes are the adoption of new requirements which will provide significant enhancement of the reliability of the equipment assumed to operate in the safety analysis, or provide enhanced assurance that specified parameters remain within their acceptance limits. These enhancements compensate for the individual minor reductions, such that taken together, the proposed changes will not significantly reduce the margin of safety.

The Generic Changes proposed in this amendment request are administrative in nature and, as such, do not involve a reduction in the margin of safety.

*Section 3/4.12*

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed Specification 3/4.12 is a new section which will provide the user with a format that will allow better access to needed information and provide concise Applicability and Action requirements. The additions of Applicability and Action requirements represent classification of intended requirements that do not presently state all required conditions of operability or provide clearly stated Action statements if the requirements are not met. The combining of the two sections and the added requirements follow Standard Technical Specifications (STS) guidelines that are in use at many operating BWRs with similar design and operating configurations as Dresden and Quad Cities Stations.

The proposed Section 3/4.12 involves the relocation of present requirements into one section identical to STS provisions. The changes also implement the Applicability and Action provisions of the STS and later operating BWR plants that have been evaluated and found acceptable for use at Dresden and Quad Cities. Present Surveillance Requirements are replaced, where applicable, with proven STS guidelines that are being used at plants with a system similar to that at Dresden and Quad Cities. The changes in the present Surveillance Requirements add testing requirements that are not presently in the Dresden and Quad Cities technical specifications. The proposed changes do not affect accident assumptions other than a minor increase in the initial power level (approximately 0.2% to 1%) and as such, do not involve a significant increase in the probability of an accident previously evaluated. The proposed specifications add additional requirements to specifications currently contained in the Technical Specifications. Since the proposed changes to the Technical Specifications implement requirements that have been demonstrated to provide acceptable operability provisions at other facilities with a design similar to that at Dresden and Quad Cities, the proposed changes do not significantly increase the consequences of an accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed administrative changes to the format and arrangement of material do not affect technical requirements or assumptions of any potential accident and; therefore, cannot create the possibility of a new or different kind of accident from any previously evaluated.

The proposed addition of Applicability and Action requirements enhance the understanding and usability of the Technical Specifications and thus represent an improvement over present specifications. New requirements are modeled after those in use at operating BWRs and do not represent requirements that will adversely affect potential accident analyses or assumptions. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve a significant reduction in the margin of safety because:

The proposed administrative changes to format, arrangement of material, clarification of requirements and other non technical changes do not affect any safety aspects of the plant and as such can not involve a significant reduction in the margin of safety.

In addition, the commission has provided guidance concerning the application of standards for determining whether significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments that are considered not likely to involve significant hazards considerations. Commonwealth Edison has reviewed the proposed changes against these examples and believes that the proposed changes fall within the scope of example (ii) ''a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications''.

The proposed amendment does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for the limiting safety system settings or a significant relaxation of the bases for the limiting conditions for operations. Therefore, based on the guidance provided in the Federal Register and the criteria established in 10 CFR 50.92(c), the proposed change does not constitute a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

*NRC Project Director:* Robert A. Capra

**Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, IllinoisDocket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois**

*Date of application for amendment request:* December 15, 1993, as supplemented by letter dated April 21, 1995

*Description of amendment request:* As a result of findings by a Diagnostic Evaluation Team inspection performed by the NRC staff at the Dresden Nuclear Power Station in 1987, Commonwealth Edison Company (ComEd, the licensee) made a decision that both the Dresden Nuclear Power Station and sister site Quad Cities Nuclear Power Station, needed attention focused on the existing custom Technical Specifications (TSs) used.

The licensee made the decision to initiate a Technical Specification Upgrade Program (TSUP) for both Dresden and Quad Cities. The licensee evaluated the current TSs for both Dresden and Quad Cities against the Standard Technical Specifications (STSs) contained in NUREG-0123, ''Standard Technical Specifications General Electric Plants BWR/4.'' The licensee's evaluation identified numerous potential improvements such as clarifying requirements, changing TSs to make them more understandable and to eliminate interpretation, and deleting requirements that are no longer considered current with industry practice. As a result of the evaluation, ComEd has elected to upgrade both the Dresden and Quad Cities TSs to the STSs contained in NUREG-0123.

The TSUP for Dresden and Quad Cities is not a complete adaption of the STSs. The TSUP focuses on (1) integrating additional information such as equipment operability requirements during shutdown conditions, (2) clarifying requirements such as limiting conditions for operations and action statements utilizing STS terminology, (3) deleting superseded requirements and modifications to the TSs based on the licensee's responses to Generic Letters (GLs), and (4) relocating specific items to more appropriate TS locations.

The December 15, 1993, and April 21, 1995, applications proposed to upgrade only Section 5.0 (Design Features) of the Dresden and Quad Cities TSs.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Implementation of these changes will provide continued assurance that specified [parameters remain] within their acceptance limits, and as such, will not significantly increase the probability or consequences of a previously evaluated accident. Some of the proposed changes to the current Technical Specifications (CTS) represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment for current Dresden and Quad Cities Station's Technical Specifications Section 5.0 represent a minor relaxation of the current requirements, and is based on BWR-STS (NUREG-0123) guidelines or later operating BWR plant's NRC accepted changes. The proposed changes are consistent with the current safety analyses and have been previously determined to represent sufficient requirements for the assurance and reliability of equipment assumed to operate in the safety analysis. Any deviations from CTS or STS requirements do not significantly increase the probability or consequences of any previously evaluated accidents for Dresden or Quad Cities Stations.

Details describing the plant's design are presented in TSUP Section 5.0. There are no Limiting Conditions for Operation (LCO) or Surveillance Requirements (SR) encompassed within TSUP Section 5.0. This information is administrative in nature and consistent to the UFSAR; therefore, the probability of any accident previously evaluated is not increased by the proposed amendment.

Create the possibility of a new or different kind of accident from any previously evaluated because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor relaxations of the current requirements which are based on generic guidance or previously approved provisions for other stations. These changes do not involve revisions to the design of the station. The proposed changes are administrative in nature and do not involve a revision in the operation of the station. As such, there are no changes to the current safety analysis. Therefore, the proposed changes will not introduce new failure mechanisms beyond those already considered in the current safety analyses.

The proposed amendment for Dresden and Quad Cities Station's Technical Specifications Section 5.0 is based on BWR-STS guidelines or later operating BWR plants' NRC accepted changes. The proposed amendment has been reviewed for acceptability at the Dresden or Quad Cities Nuclear Power Stations considering similarity of system or component design versus the BWR-STS or later operating BWRs. Any deviations from CTS or BWR-STS requirements do not create the possibility of a new or different kind of accident previously evaluated for Dresden and Quad Cities Stations. No new modes of operation are introduced by the proposed changes. The proposed changes maintain at least the present level of operability, and in some cases are more conservative. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Involve a significant reduction in the margin of safety because:

In general, the proposed amendment represents the conversion of current requirements to a more generic format, or the addition of requirements which are based on the current safety analysis. Others represent minor curtailments of the current requirements which are based on generic guidance or previously approved provisions for other stations. The proposed amendment to Technical Specification Section 5.0 implements present requirements, or the intent of present requirements in accordance with the guidelines set forth in the STS. Any deviations from CTS or BWR-STS requirements do not significantly reduce the margin of safety for Dresden or Quad Cities Stations. These changes do not involve revisions to the design of the station. The proposed changes are administrative in nature and do not involve a revision in the operation of the station. As such, there are no changes to the current safety analysis. Therefore, the proposed changes will not introduce new failure mechanisms beyond those already considered in the current safety analyses. Therefore, because the proposed changes are administrative in nature, do not involve a revision in the operation of the station and maintains the current design requirements specified in the UFSAR, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* For Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

*NRC Project Director:* Robert A. Capra

**Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of amendment request:* December 13, 1994

*Description of amendment request:* The proposed amendment would revise the Palisades' technical specifications (TSs) to add a high thermal performance (HTP) departure from nucleate boiling correlation to Safety Limit 2.1. The HTP correlation is used for the high thermal performance fuel loaded during recent fuel cycles.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

*1. Involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed change to the TS adds the HTP critical heat flux correlation to the Safety Limit - Reactor Core Section 2.1. The HTP correlation is an NRC approved methodology for a Departure from Nucleate Boiling (DNB) Correlation for high thermal performance (HTP) fuel as is used at Palisades. The HTP correlation is an extension of the currently approved ANFP correlation. There are no associated changes in plant operation. Palisades fuel loaded in cycle 9 and later meet the requirements of the HTP correlation. Therefore, operation of the facility in accordance with the proposed TS would not result in a significant increase in the probability or consequences of an accident previously evaluated.

*2. Create the possibility of a new or different kind of accident from any previously evaluated.*

The HTP correlation will allow for more accurate DNB predictions within the applicable operating conditions for fuels with the HTP design used at Palisades. There are no changes in plant operation. Therefore operation of the facility in accordance with the proposed TS would not create the possibility of a new or different kind of accident from any previously evaluated.

*3. Involve a significant reduction in a margin of safety.*

As stated previously, the HTP correlation will allow for more accurate DNB predictions within the applicable operating conditions for fuel with the HTP design. There are no associated changes in plant operation. Therefore, operation of the facility in accordance with the proposed TS would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Van Wylen Library, Hope College, Holland, Michigan 49423.

*Attorney for licensee:* Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

*NRC Project Director:* Cynthia A. Carpenter, Acting

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* January 18, 1995

*Description of amendment request:* The proposed amendments would relocate the requirements for the seismic instrumentation, meteorological instrumentation, and loose-part detection system from the Technical Specifications to the Selected Licensee Commitment (SCL) Manual. This will allow future changes to these controls to be performed under the provisions of 10 CFR 50.59. No changes are being made to the technical content of the affected Technical Specification pages.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

*Criterion 1*

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. Relocation of the affected TS sections to the SLC Manual will have no effect on the probability of any accident occurring. In addition, the consequences of an accident will not be impacted since the above instrumentation will continue to be utilized in the same manner as before. No impact on the plant response to accidents will be created.

*Criterion 2*

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms will be created as a result of relocating the affected TS requirements to the SLC Manual. Plant operation will not be affected by the proposed amendments and no new failure modes will be created.

*Criterion 3*

The requested amendments will not involve a significant reduction in a margin of safety. No impact upon any plant safety margins will be created. Relocation of the affected TS requirements to the SLC Manual is consistent with the content of the Westinghouse RSTS [Revised Standard Technical Specifications], as the NRC did not require technical specification controls for the affected instrumentation in the RSTS. The proposed amendments are consistent with the NRC philosophy of encouraging utilities to propose amendments that are consistent with the content of the RSTS.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* Herbert N. Berkow

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of amendment request:* April 3, 1995

*Description of amendment request:* The amendments will incorporate line-item TS improvements to Specifications 3/4.8.1 ''Electrical Power Systems-A.C. Sources,'' and 4.8.1.2.2 ''Electrical Power Systems-Shutdown.'' The proposed changes are consistent with recommendations for Emergency Diesel Generator (EDG) Surveillance Requirements in NUREG-1366, and regulatory guidance provided in Generic Letter (GL) 93-05 and GL 94-01. This proposal also contains FPL's commitment to implement a maintenance program for monitoring and maintaining EDG performance for both St. Lucie Units consistent with 10 CFR 50.65 and the guidance of Regulatory Guide 1.160.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not

involve a significant increase in the probability or consequences of an accident previously evaluated.

The license amendments proposed for St. Lucie Units 1 and 2 will incorporate line-item Technical Specification (TS) improvements for Emergency Diesel Generators (EDG) pursuant to guidance provided in Generic Letters (GL) 93-05 and 94-01. The EDGs are not accident initiators, the proposed TS changes do not involve any assumptions relative to accident initiators in the plant safety analyses, and therefore the proposed amendments will not impact the probability of occurrence for accidents previously analyzed.

The EDG line-item TS improvements associated with GL 93-05 are based on recommendations designed to remove unwarranted requirements for testing during power operation and other factors that are counter-productive to safety in terms of equipment degradation and availability. These recommendations resulted from a comprehensive study of industry-wide EDG surveillance requirements and subsequent findings reported by the NRC in NUREG-1366. The proposed amendments are consistent with the GL 93-05 guidance for implementing such recommendations.

Similarly, GL 94-01 provides guidance for a line-item TS improvement that will remove accelerated testing requirements from the TS provided that the licensee commits to a maintenance program for monitoring and maintaining EDG performance that includes the applicable provisions of the maintenance rule (10 CFR 50.65). Such a program will further assure EDG availability. Since the availability of EDGs is assumed in certain success paths for mitigating analyzed accidents, an improvement in EDG availability will enhance accident mitigation capabilities.

Therefore, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments incorporate line-item TS improvements to EDG surveillance testing requirements, and will not change the physical plant or the modes of plant operation defined in the Facility License. The changes do not involve the addition or modification of equipment, nor do they alter the design or methods of operation of plant systems. Plant configurations that are prohibited by TS will not be created by the amendments. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendments are designed to improve EDG availability by eliminating unwarranted surveillance testing. The presently specified surveillance intervals are not changed. The proposed changes do not otherwise alter the basis for any technical specification that is related to the establishment of, or the maintenance of a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the above discussion and the supporting Evaluation of Technical Specification changes, FPL has determined that the proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

*Attorney for licensee:* J. R. Newman, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036

*NRC Project Director:* David B. Matthews, Director

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of amendment request:* March 7, 1995

*Description of amendment request:* The proposed amendment would add an Exception to Technical Specifications (TS) 3.6.A and 3.6.C. The Exception would permit reduced component cooling water flow for short periods of time, while component cooling water heat exchangers are shifted.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Plant experience shows that the component cooling water heat exchangers can be shifted in a few minutes; well within the time limit for Remedial Action under this TS 3.6.A or C, or TS 3.0.A. Thus, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect equipment reliability when such equipment is required to be operable. Existing TS 3.6 and its Remedial Action statement govern the plant circumstances under which cooling water subsystems are required, and specify the maximum time such subsystems may be unavailable. The proposed change does affects neither operating requirements nor the time limit on restoring system operability.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not significantly alter the availability or condition of the cooling water subsystems and, therefore, does not alter the accident analysis or its associated conclusions. The proposed change would permit flow in one component cooling water train to be reduced below that required for operation of the emergency core cooling systems in the recirculation mode, for a short period of time. The amount of time that flow is reduced is small, and full flow operation can be easily restored within the time required for design heat load removal. Thus, there is no significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that this amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

*Attorney for licensee:* Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, ME 04011

*NRC Project Director:* Phillip F. McKee

**Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut**

*Date of amendment request:* April 18, 1995

*Description of amendment request:* The proposed amendment would allow the use of the ANSI/ANS 5.1-1979 decay heat model for post-loss of coolant accident containment cooling analysis.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

NNECO has reviewed the proposed change in accordance with 10CFR50.92 and concluded that the change does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The change to the decay heat model used to determine post-accident conditions cannot affect the probability of any accident. No changes to plant operation or design would occur due to the new analysis.

The new model cannot directly affect the consequences of an accident, since it is the tool used to predict the temperature effects of the postulated accident. However, using the ANSI/ANS 5.1-1979 model could change the anticipated actions necessary to respond to an event. Changing the response action could possibly affect the consequences of an accident. This model change will not have such an effect. Operator actions to throttle LPCI [low pressure coolant injection], CS [core spray], or ESW [emergency service water] pump flow are taken based upon observed conditions, not predetermined data points from the analysis.

Operability of the emergency core cooling systems (ECCS) can be shown for temperatures that are higher than those predicted by the containment cooling analysis.

Therefore, the utilization of the ANSI/ANS 5.1-1979 decay heat model does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed license amendment only revises the predicted temperature that result from a postulated accident. There is no change to the design or operation of any system or component. Since this change only deals with the post-accident effects of currently analyzed accidents, there is no possibility of creating a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The early design documentation stated that the ECCS components were designed for post-accident torus temperatures of 203°F. As this issue evolved, NNECO performed operability determinations which showed that peak temperatures of 209°F were acceptable. Utilizing a more accurate decay heat model which results in lower predicted peak temperatures demonstrates the acceptability of the plant design. Therefore, replacing the May-Witt decay heat model with the ANSI/ANS 5.1-1979 model does not result in a decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

*Attorney for licensee:* Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

*NRC Project Director:* Phillip F. McKee

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of amendment request:* March 29, 1995

*Description of amendment request:* The proposed amendment changes Technical Specifications to revise peaking factor penalties based on NRC approved methods.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes to the action statements of Sections 3.2.2.1 and 3.2.2.2 are purely administrative and therefore they do not adversely affect the probability or consequences of an accident previously analyzed. The proposed changes to Surveillance Requirements 4.2.2.1.2.e, 4.2.2.1.4.e, 4.2.2.2.2.e and 4.2.2.2.4.e and Section 6.9.1.6.b are based on the NRC approved methodology for calculating the penalty to be applied to $F_Q^M(Z)$. The margin for the $F_Q^{RTP}$ limit is still maintained by the proposed changes. In addition, the penalty is included in the COLR [Core Operating Limits Report] which will be maintained and controlled per the requirements of 10CFR50.59. Therefore, the proposed changes do not increase the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes to the Action Statement of Sections 3.2.2.1 and 3.2.2.2 are purely administrative and therefore, they do not create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes to Surveillance Requirements 4.2.2.1.2.e, 4.2.2.1.4.e, 4.2.2.2.2.e, and 4.2.2.2.4.e and Section 6.9.1.6.b do not create a malfunction that is different from those previously evaluated. The changes do not involve positioning reactivity systems or plant components into any new configuration or sequence not previously analyzed. Therefore, the changes will not create the possibility of a new or different kind of accident from any other previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed changes to the action statements of Sections 3.2.2.1 and 3.2.2.2 are purely administrative and therefore they will not reduce the margin of safety. The proposed changes to Surveillance Requirements 4.2.2.1.2.e, 4.2.2.1.4.e, 4.2.2.2.2.e and 4.2.2.2.4.e and Section 6.9.1.6.b do not reduce the margin to the $F_Q^{RTP}$ limit. The approved methods more distinctly evaluate the expected changes to $F_Q^M$ than previously existed. Therefore, there is no impact on the margin of safety as specified in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

*Attorney for licensee:* Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

*NRC Project Director:* Phillip F. McKee

**PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania**

*Date of application for amendment:* March 30, 1995

*Description of amendment request:* The proposed change would revise Technical Specifications Section 4.7.D.1.b.(1) by adding a footnote to exempt the High Pressure Coolant Injection [HPCI] motor-operated valve MO-2-23-015 from quarterly stoke testing requirements until refueling outage 2RO11.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The proposed change does not serve as an initiator or contributor to any accidents previously evaluated. It does not decrease the effectiveness of equipment relied upon to mitigate previously evaluated accidents. A calculation was performed and it has been determined the leakage through the valve's packing will be within the allowable limits of containment leakage ($L_a$). While positioning the valve in the backseated position does increase its stroke time, it has been calculated and demonstrated that the valve will close within the TS time limit of 20 seconds.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not serve as an initiator or contributor to any of the accidents previously evaluated. The proposed change does not introduce any new modes of plant operation.

Implementation of the proposed changes will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes or accident initiation. It does not impair or prevent safety systems from performing their safety function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not serve as an initiator or contributor to any accidents evaluated in the [Safety Analysis Report] SAR. It has no impact on any safety analysis assumptions. Exempting the HPCI valve MO-2-23-015 from quarterly stroke testing until 2RO11 does not impact its reliability or affect its ability to perform its intended safety function. The change does not adversely affect the assumptions or sequence of events used in any accident analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* John F. Stolz

**PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* March 16, 1995

*Description of amendment request:* This amendment would change the existing requirements for the Source Range Monitors (SRM) while the plant is in the refueling condition to requirements based on the Improved Technical Specifications in NUREG-1433, ''Standard Technical Specification General Electric Plants, BWR/4.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed changes to the SRM requirements will not increase the probability or consequences of an accident previously evaluated. The SRMs are not assumed to function during any UFSAR [Updated Final Safety Analysis Report] design basis accident or transient analysis. This TS change will not alter any safety limits which ensure the integrity of fuel barriers, and will not result in any increase to onsite or offsite dose. Additionally, continued availability of the SRMs in the refuel mode is ensured through additional testing requirements being added by this TS change. The changes to the SRM requirements will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients.

The proposed changes are based on NUREG-1433, ''Standard Technical Specifications General Electric Plants, BWR/4,'' and are consistent with the PECO Energy submittal of September 29, 1994, requesting an overall conversion, based on NUREG-1433. The overall conversion to the ITS [Improved Technical Specifications] included both technically justified deviations from the NUREG, and technically justified changes from the PBAPS current TS.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the SRM requirements will not create the possibility of a new or different type of accident from any previously evaluated. The SRMs are not assumed to function during any analyzed UFSAR design basis accident or transient analysis. Additionally, the changes will not involve any changes to plant systems, structures or components (SCCs) which could act as new accident initiators. Implementation of the proposed changes will effect the manner in which these SCCs are tested; however, TS requirements that govern routine testing and verification of plant components and variables are not assumed to be initiators of any analyzed event.

3. The proposed change does not result in a significant reduction in the margin of safety.

No margins of safety are reduced as a result of the proposed TS changes. No safety limits will be changed as a result of this TS change. The proposed change does not involve a reduction in the margin of safety because SRMs are not credited in any safety analysis. At least one SRM will remain operable during rod withdrawal during core alterations and rod withdrawal will not occur if no SRMs are operable. Excessive reactivity additions will be quickly identified and mitigated by the Intermediate Range Monitors and associated rod blocks. The Average Power Range Monitor Flux scram, and not any SRM function, is credited for mitigating a rod withdrawal or reactivity addition accident.

Use of a spiral offload or reload pattern will provide assurance that the SRM will be in the optimum position for monitoring changes in neutron flux levels during core alternations.

The changes proposed in this TS change do not introduce any hardware changes, and will not alter the intended operation of plant structures, systems or components utilized in the mitigation of accidents or transients. Additionally, these changes will not introduce any new failure modes of plant equipment not previously evaluated.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* John F. Stolz

**PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* March 22, 1995

*Description of amendment request:* The amendment would revise Note (1) for Technical Specifications Tables 3.7.2 through 3.7.4 by reducing the Local Leak Rate Test (LLRT) hold time duration from one hour to 20 minutes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not serve as an initiator or contributor to any accidents previously evaluated. It does not decrease the effectiveness of equipment relied upon to mitigate previously evaluated accidents. The change does not involve any physical changes to any plant systems, structures, or components.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changed does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not serve as an initiator or contributor to any of the accidents previously evaluated. The proposed change does not introduce any new modes of plant operation.

Implementation of the proposed changes will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes or accident initiation. It does not impair or prevent safety systems from performing their safety function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed change does not serve as an initiator or contributor to any accidents evaluated in the SAR [Safety Analysis Report]. It has no impact on any safety analysis assumptions. Changing the LLRT duration hold time from one hour to 20 minutes does not impact equipment reliability. The change does not adversely affect the assumptions or sequence of events used in any accident analysis. Therefore, the propose change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* John F. Stolz

**Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania**

*Date of amendment request:* November 21, 1994, as supplemented by letter dated April 6, 1995

*Description of amendment request:* The proposed amendment would make changes affecting the Administrative Controls Section of the Technical Specifications (TSs). The areas proposed to be changed are: 1) NEEDS [Nuclear Effectiveness and efficiency Design Study] Organization Title Changes, 2) Minimum Shift Crew Composition, 3) Delete Independent Techincal Review Section from TS, 4) Delete NRB [Nuclear Review Board] Review Section from TS, and 5) Delete NRB Audit Section from TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes to revise the organization position titles, PORC [Plant Operations Review Committee] composition description, and eliminate the Assistant Superintendent - Operations position do not involve any physical modifications to plant structures, systems, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested, or inspected. The proposed changes to position titles will not change the requirements for the qualifications and training of personnel in any management or supervisory position. Personnel will continue to meet the guidance specified in ANSI/ANS 3.1-1978 as required by Technical Specification 6.3.1. The probability of occurrence of an accident is based in part on: the training and qualifications of the personnel filling key plant management and supervisory positions; clear lines of authority, responsibility and communication; and, adequate management and corporate oversight of plant performance and activities. The proposed TS changes do not change any of these management and organizational elements.

Allowing the Plant Manager to designate appropriately qualified, trained and experienced members of the LGS [Limerick Generating Station] staff as members of the PORC, as proposed, will not degrade the effectiveness of the PORC. The qualifications, training and experience level of the PORC will meet the requirements listed in ANSI/ANS 3.1-1978, and the required PORC quorum (including the use of alternates) will not be affected.

Elimination of the position of Assistant Superintendent - Operations eliminates a level of supervision between the Plant Manager and the Shift Managers. The Shift Managers, who hold SRO licenses, will report directly to the Senior Manager - Operations. Other organizational changes within the Operations group (i.e., establishment of the positions of Manager - Operations Services and Manager - Operations Support) will ensure that the Senior Manager - Operations has sufficient time to properly supervise and monitor on-shift performance. The Senior Manager -Operations and/or an Operations Manager will be required to hold a Senior Reactor Operator (SRO) license. Individuals filling these positions will satisfy the applicable training, qualifications, and experience requirements of ANSI/ANS 3.1-1978.

The consequences of an accident could be affected by the qualifications and training of plant management and supervisory personnel. However, the proposed changes do not change the qualifications and training of personnel in any management or supervisory position. Personnel will continue to meet the criteria specified in ANSI/ANS 3.1-1978 as required by TS 6.3.1.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes to increase the minimum shift crew composition do not involve any physical changes to plant SSC.

The probability of the occurrence of an accident is based in part on the operating crew and their ability to safely operate the plant. The increase in the minimum on-shift crew composition and the associated changes improves the capability of the on-shift crew to safely operate the plant and SSC, thereby reducing the probability of a situation that could result in an accident. The increase in the minimum on-shift crew composition will improve the manner in which the SSC are operated, maintained, tested, and inspected.

The consequences of an accident could be affected by an operating error. However, the proposed TS changes increase the number of licensed operators required to be on-shift, and therefore, increase the capability of the on-shift crew to properly operate the facility and to implement the appropriate emergency procedures to reduce the consequences of an accident.

The proposed changes will also delete redundant and/or relocate existing independent technical review and, Nuclear Review Board review and audit requirements from TS that are and/or will be contained in the LGS UFSAR [Updated Final Safety Analysis Report]. Removal of redundant/relocation of existing requirements does not affect any equipment important to safety, or involve any physical modifications to plant SSC, therefore, is not associated with an accident initiator or accident mitigator and

can not affect the probability of occurrence of an accident or increase the consequences of an accident. The licensee controlled UFSAR containing the requirements will be maintained using the provisions of 10 CFR 50.59, or 10 CFR 50.54(a), as appropriate, and are subject to the change control process in the Administrative Controls Section (6.0) of the Technical Specifications. Since future changes to related licensee-controlled documents will be evaluated per 10 CFR 50.59 or 10 CFR 50.54(a), no increase (significant or insignificant) in the probability or consequences of an accident previously evaluated will be allowed.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes to revise the organization position titles, PORC composition description, and eliminate the Assistant Superintendent - Operations position do not involve any physical modifications to plant structures, systems, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested, or inspected. The proposed changes to position titles will not change the requirements for the qualifications and training of personnel in any management or supervisory position. Personnel will continue to meet the guidance specified in ANSI/ANS 3.1-1978 as required by Technical Specification 6.3.1. Therefore, these proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the on-shift crew composition can not create the possibility of a new or different type of accident than previously evaluated in the SAR since implementation of the changes will not involve any physical changes to the plant SSC. The increase in the minimum on-shift crew composition increases the ability of the operating crew to ensure that the SSC are properly operated, maintained, tested and inspected. An increase in the required number of licensed operators on each shift improves the ability of the crew to adequately operate the facility, to respond to accident conditions, and to implement applicable plant procedures. Therefore, these proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will also delete redundant and/or relocate existing independent technical review and, Nuclear Review Board review and audit requirements from TS that are and/or will be contained in the UFSAR. The changes will not alter the plant configuration (no new or different type of equipment will be installed) or create changes in methods governing normal plant operation that will introduce new failure modes. These changes will not impose different requirements and proper control of information will be maintained. These changes will not alter assumptions made in the safety analysis and licensing basis. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes to revise the organization position titles, PORC composition description, and eliminate the Assistant Superintendent - Operations position, do not reduce the margin of safety because positions with equivalent authority and responsibility are established and the new positions have equivalent requirements for education, experience and training. Allowing the Plant Manager to designate appropriately qualified, trained and experienced members of the LGS staff as members of the PORC will not degrade the effectiveness of the PORC because the qualifications, training and experience level of the PORC will meet the requirements listed in ANSI/ANS 3.1-1978 and the required PORC quorum (including the use of alternates) will not be affected. Elimination of the position of Assistant Superintendent - Operations eliminates a level of supervision between the Plant Manager and the Shift Managers. If the Senior Manager - Operations does not hold an SRO license, then an Operations Manager must hold an SRO license. This individual will 1) be qualified to fill the Senior Manager - Operations position, 2) have the same management authority over the licensed operators as the Senior Manager - Operations, and 3) by being designated by Administrative procedures assures that there is always an individual holding a current SRO license in one of the Operations management positions. Other organizational changes (i.e., establishment of the positions of Manager - Operations Services and Manager - Operations Support), will ensure that the Senior Manager -Operations has sufficient time to properly supervise and monitor on-shift performance. Therefore, these changes do not involve a significant reduction in a margin of safety.

The proposed changes to the on-shift crew composition increases the number of licensed SROs per shift to be one (1) above the minimum number required by the regulations. Additionally, the title changes are consistent with the organization and reporting relationships discussed in the regulation and the LGS Updated Final Safety Analysis Report (UFSAR). The Shift Manager holds a SRO license for both units and is assigned responsibility for overall plant operation at all times when there is fuel in any unit. The other SROs on the shift report to the Shift Manager and at least one (1) of the SRO licensed individuals is in the Main Control Room when either unit is in an operating mode other than cold shutdown or refuel. The increase in the minimum on-shift crew composition and the associated changes improves the capability of the on-shift crew to safely operate the plant and SSC. Therefore, these changes do not involve a significant reduction in a margin of safety.

The proposed changes will also delete redundant and/or relocate existing independent technical review and, Nuclear Review Board review and audit requirements from TS that are and/or will be contained in the LGS UFSAR. The changes will not reduce the margin of safety since they have no impact on any safety analysis assumptions. In addition, any future changes to the UFSAR will be evaluated per the requirements of 10 CFR 50.59 or 10 CFR 50.54(a), as appropriate. Therefore, these changes will not involve a significant reduction in a margin of safety.

The existing requirement for NRC review and approval of revisions, in accordance with 10 CFR 50.90, to these TS details and requirements proposed for relocation, does not have a specific margin of safety upon which to evaluate. However, since the proposed changes to delete redundant and/or relocate requirements are consistent with the BWR Standard Technical Specifications (NUREG-1433) and the four criteria set forth in the NRC ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' and since the change controls for proposed relocated details and requirements provide an equivalent level of regulatory authority, revising the TS to reflect the approved level of detail and requirements ensures no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* John F. Stolz

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* February 22, 1995

*Description of amendment request:* The proposed changes to the James A. Fitzpatrick Technical Specifications establish operability and surveillance requirements for the Reactor Vessel Overfill Protection Instrumentation that initiates feedwater pump turbine trips, and a main turbine trip, on high reactor vessel water level.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes involve the addition of new operability and surveillance requirements to the Technical Specification regarding the current high reactor water level trip feature for the feedwater pump turbines and main turbine. The changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints associated with the plants instrumentation and controls. Further, the Fitzpatrick UFSAR [Updated Final Safety Analysis Report], Section 14.5.9, for the Feedwater Controller Failure operational transient does not take credit for the automatic high reactor vessel water level trip of the feedwater pump turbines. The Fitzpatrick UFSAR analysis (Section 14.5.9), for the Feedwater Controller Failure operational transient assumes an automatic high reactor vessel water level trip of the main turbine. Incorporating these requirements into the Technical Specifications provides additional assurance that a trip feature described in the UFSAR remains functional. For these reasons the changes do not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from those previously evaluated because:

The proposed changes do not introduce any new accident initiators or failure mechanisms since the changes do not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. Accordingly, the changes do not create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in the margin of safety because:

The proposed changes establish operability and surveillance requirements for the design feature that trips the feedwater pump turbines and main turbine on high reactor vessel water level. The requirements will assure the continued operability of a trip function that is designed to initiate protective measures in the event of excessive feedwater flow. Tripping the feedwater pump turbines and main turbine on high reactor vessel water level, precludes potential adverse safety implications associated with a reactor overfill condition. Accordingly, the proposed changes will enhance the plant safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Ledyard B. Marsh

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* March 2, 1995

*Description of amendment request:* The proposed changes to the James A. Fitzpatrick Technical Specifications extend the surveillance test intervals for the snubber systems to support 24 month operating cycles.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes increase the interval between snubber functional tests. These changes are consistent with the guidance provided in Generic Letter 91-04. These changes do not involve any physical changes to the plant, nor do they alter the way snubbers function. The type of testing and the actions taken if a snubber fails a functional test remain the same. The review of the snubber installation and maintenance records will continue to ensure that the snubbers service life is not exceeded prior to the next scheduled review. The proposed changes to bases 4.0 and 4.6 clarify that the snubber functional testing interval is consistent with the length of the operating cycle. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes increase the interval between snubber functional tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not change the ability of the snubbers to provide dynamic load support during a design basis accident. Past operating experience indicates that the snubber program at the FitzPatrick plant adequately identifies snubber failures. No changes are proposed to the type of testing performed only to the surveillance interval length. The proposed changes do not modify the design or operation of plant equipment, therefore, no new or different failure modes are introduced. The Technical Specification for snubber testing is self-corrective. If any snubber fails a functional test, Technical Specifications require additional testing of a 10% sample of that type of snubber until no more failures are found. The functional test criteria remains unchanged and ensures a 95% confidence level that at least 90% of the snubbers are operable. The proposed changes to bases 4.0 and 4.6 clarify that the snubber functional testing interval is consistent with the length of the operating cycle. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes increase the interval between snubber functional tests. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not alter the configuration of the snubbers nor change the manner in which the snubbers function. Operation of the facility remains unchanged by the proposed changes. An evaluation of past equipment performance indicates that snubber operability is not time dependent. The proposed changes to bases 4.0 and 4.6 clarify that the snubber functional testing interval is consistent with the length of the operating cycle. Therefore, a longer surveillance test interval will not degrade snubber performance and will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Ledyard B. Marsh

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* April 12, 1995

*Description of amendment request:* The proposed changes to the James A. FitzPatrick Technical Specifications extend the surveillance test intervals for the nuclear steam supply system to support 24 month operator cycles.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes extend the surveillance test intervals for nuclear steam supply system components. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not involve any modification to the plant, nor do they alter equipment functions. On-line testing will provide a redundant and early means of demonstrating system

operability. Based on past results, SRV [safety/relief valve] mechanical performance has been good. No SRV setpoint changes are involved in this application. The proposed change to bases section 4.6 clarifies that the nuclear steam supply system surveillance testing interval is consistent with the length of the operating cycle. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes extend the surveillance test intervals for nuclear steam supply system components. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not affect the way in which the nuclear steam supply system operates nor alter the type of surveillance testing performed. SRV drift analyses indicate that SRV drift with a 3% tolerance would be acceptable for (i.e., bounded by) a 24 to 30 month interval. Leaking or partially open SRVs are detected by the acoustic monitoring system. Since the proposed changes do not modify the design or equipment of the plant, no new failure modes are introduced. The proposed change to bases section 4.6 clarifies that the nuclear steam supply system surveillance testing interval is consistent with the length of the operating cycle. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes extend the surveillance test intervals for nuclear steam supply system components. These changes are consistent with the guidance provided in Generic Letter 91-04. The proposed changes do not alter the configuration of the nuclear steam supply system nor change the manner in which the system functions. Operation of the facility remains unchanged by the proposed changes. An evaluation of past equipment performance indicates that SRV mechanical performance has been good. In addition, SRV drift has been analyzed to be within the allowable tolerance for the extended surveillance interval. The proposed change to bases section 4.6 clarifies that the nuclear steam supply system surveillance testing interval is consistent with the length of the operating cycle. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Ledyard B. Marsh

**Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York**

*Date of amendment request:* March 3, 1995, as supplemented April 12, 1995

*Description of amendment request:* The licensee commenced operating on a 24-month fuel cycle, instead of the previous 18-month fuel cycle, with cycle 9. Fuel cycle 9 started in August 1992; however, the licensee shut down the facility in February 1993 for a performance improvement outage. Although a firm restart date has not yet been established, restart is expected in the spring of 1995. In order to accommodate operation on a 24-month cycle after the facility restarts, the licensee requested an amendment to the Technical Specifications (TSs) to incorporate the indicating instrument calibration frequency changes listed below:

(1) The licensee proposed changing the calibration frequency for the containment water level monitor instrumentation (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

(2) The licensee proposed changing the calibration frequency for the auxiliary feedwater (AFW) flow rate instrumentation (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

(3) The licensee proposed changing the calibration frequency for the containment building ambient temperature sensors (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

(4) The licensee proposed changing the calibration frequency for the seismic monitoring instrumentation (specified in TS Table 4.10-2) to accommodate operation on a 24-month cycle.

In addition, the licensee proposed adding a new surveillance requirement to TS Table 4.1-1 for testing the core exit thermocouples.

These proposed changes follow the guidance provided in Generic Letter 91-04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle,'' as applicable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed changes extend the calibration frequency (to 24 months) for the:

- containment temperature channels,
- containment water level monitoring system channels,
- seismic instrumentation channels, and
- auxiliary feedwater flow rate channels.

These changes are being made to accommodate a 24 month operating cycle. The proposed changes in the calibration frequencies do not involve any plant hardware changes, nor do they change the way the systems function.

Extension of the calibration and surveillance test intervals in question were evaluated and the results documented in [New York Power Authority (NYPA) Report No. IP3-RPT-MULT-00424, ''Indicating Instruments Surveillance Test Extensions,'' May 1993]. An Instrument Drift Analysis for the indicating instruments [NYPA Report No. IP3-RPT-MULT-00407, ''Instrument Drift Analysis for Indicating Loops,'' April 1993] was performed to evaluate past and future instrument drift. The results of these evaluations and analyses indicate that the calibrations in question can safely be extended to accommodate the 24 month operating cycle.

For containment temperature, auxiliary feedwater flow and seismic instrumentation, past instrument drift has generally been within acceptable limits. Some drift exceeding the calibration tolerance did occur for the triaxial time-history accelographs, but on-line testing should ensure that instrument drift over the longer cycle does not degrade system performance. For containment water level systems (except containment building level), new electronic transmitters were recently installed. Due to the lack of data, an instrument drift analysis was not performed. However, the new containment water level transmitters improved the overall channel accuracy.

Future instrument drift was predicted and used to update existing loop accuracy calculations, with the following results. (1) For the containment temperature channels, the loop accuracy calculations were revised to incorporate the larger channel uncertainties. Postulated drift over 30 months should have a negligible effect on the EOPs [Emergency Operating Procedures] and plant shutdown. (2) For the containment system sump water levels, future drift is not a concern because the containment building water level is used post accident. The larger uncertainties can safely be accommodated by changing the EOP setpoint for transfer to cold leg recirculation. (3) For the seismic instrumentation, past drift was negligible, and future drift is not expected to be cycle length dependent. (4) For the auxiliary

feedwater flow rate channels, the larger uncertainties can be safely accommodated by changing the EOP setting for the minimum AFW flow required for heat removal.

For the containment temperature and seismic instrumentation, on-line testing provides added assurance that the instrumentation is functioning as required.

[For the core exit thermocouples, adding a requirement to conduct testing every 18 months will serve to ensure system operability. This new testing requirement does not change the way the plant operates or involve hardware modifications.]

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes extend the calibration frequency (to 24 months) for the:

- containment temperature channels,
- containment water level monitoring system channels,
- seismic instrumentation channels, and
- auxiliary feedwater flow rate channels.

These changes are being made to accommodate a 24 month operating cycle. The proposed changes in the calibration frequencies do not involve any plant hardware changes, nor do they change the way the systems function.

Extension of the calibration and surveillance test intervals in question were evaluated and the results documented in [same as Question (1)]. An Instrument Drift Analysis for the indicating instruments [same as Question (1)] was performed to evaluate past and future instrument drift. The results of these evaluations and analyses indicate that the calibrations in question can safely be extended to accommodate the 24 month operating cycle. For the containment temperature and seismic instrumentation, on-line testing provides added assurance that the instrumentation is functioning as required.

[For the core exit thermocouples, adding a requirement to conduct testing every 18 months will serve to ensure system operability. This new testing requirement does not change the way the plant operates or involve hardware modifications.]

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes extend the calibration frequency (to 24 months) for the:

- containment temperature channels,
- containment water level monitoring system channels,
- seismic instrumentation channels, and
- auxiliary feedwater flow rate channels.

These changes are being made to accommodate a 24 month operating cycle. The proposed changes in the calibration frequencies do not involve any plant hardware changes, nor do they change the way the systems function.

For containment temperature, auxiliary feedwater flow and seismic instrumentation, past instrument drift has generally been within acceptable limits. Some drift exceeding the calibration tolerance did occur for the triaxial time-history accelographs, but on-line testing should ensure that instrument drift over the longer cycle does not degrade system performance. For containment water level systems (except containment building level), new electronic transmitters were recently installed. Due to the lack of data, an instrument drift analysis was not performed. However, the new containment water level transmitters improved the overall channel accuracy.

[For the core exit thermocouples, adding a requirement to conduct testing every 18 months will serve to ensure system operability. This new testing requirement does not change the way the plant operates or involve hardware modifications.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Ledyard B. Marsh

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* March 30, 1995

*Description of amendment request:* The proposed change to the Technical Specifications eliminates the defined term CONTROLLED LEAKAGE, removes Controlled Leakage flow from the Reactor Coolant System Operational Leakage Limiting Condition for Operation (LCO), and establishes a new Seal Injection Flow LCO.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do not involve a significant increase in the probability or consequence of an accident previously evaluated.

Changing the Technical Specification to limit seal injection flow instead of seal leakoff flow does not affect the probability of any accident previously evaluated. Maintaining adequate Emergency Core Cooling System (ECCS) flow during Loss of Coolant Accident (LOCA) ensures that the consequences of these accidents are unaffected. The existing Technical Specification allows seal injection throttle valve positioning that could result in seal injection flow path resistance values below those used in the Salem ECCS hydraulic flow analyses. Reduced line resistances could result in inadequate ECCS flow to the reactor core. Revising the Technical Specification to limit RCP seal injection flow ensures that the accident analysis assumptions are maintained, and the previously evaluated accident consequences remain unchanged.

Therefore, it may be concluded that the proposed changes do not increase the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any hardware modifications or result in any functional changes to system operation. RCP seal injection flow is used as a limiting parameter in-place of RCP seal leakoff flow.

Since design requirements continue to be met and the RCS pressure boundary is not challenged, no new failure mode is created. Thus, an accident different from any already evaluated is not created by this change.

Therefore, it may be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which Safety Limits or Limiting Safety System Setpoints are determined. Controlled Leakage (RCP seal leakoff)is removed from the Reactor Coolant System Leakage Limiting Condition for Operation (LCO), and a new seal injection LCO is established. The new LCO continues to limit seal injection flow during accident conditions. The limiting parameter is changed from RCP seal leakoff flow to RCP seal injection flow. These changes ensure that the accident analysis assumptions and existing margins of safety are maintained. The seal injection flow specification limit is not applicable in Mode 4 and lower, because high seal injection flow is less critical due to lower Reactor Coolant System (RCS) pressure and decay heat removal requirements in these modes. Reactor coolant pump seal injection flow must be limited in Modes 1, 2, and 3 to ensure adequate Emergency Core Cooling System Flow.

Therefore, it may be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Winston and

Strawn, 1400 L Street, NW, Washington, DC 20005-3502

*NRC Project Director:* John F. Stolz

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* April 6, 1995 (TS 95-05)

*Description of amendment request:* The proposed change would (1) replace the reference to Table 3.6-2 from Definition 1.7.a.2 for Containment Integrity with a phrase that will allow the valves to be opened under administrative control; (2) replace the reference to Table 3.6-2 from Surveillance Requirement 4.6.1.1 with a phrase that will allow the valves to be opened under administrative control; (3) delete the reference to Table 3.6-1 from Technical Specification 3.6.1.2; (4) delete Table 3.6-1, ''Bypass Leakage Paths to the Auxiliary Building -- Secondary Containment Bypass Leakage Paths;'' (5) revise Specification 3.6.3 to delete the reference to Table 3.6-2, add a footnote that discusses the opening of penetrations intermittently, add the phrase to take exception to the containment vacuum isolation valves, and add an action statement to indicate that Specification 3.0.4 does not apply to the specification; (6) delete Surveillance Requirement 4.6.3.1; (7) delete references to Table 3.6-2 in Specifications 4.6.3.2 and 4.6.3.3 and additional wording added to indicate that the specifications apply to automatic containment isolation valves; (8) delete Table 3.6-2, ''Containment Isolation Valves'' and add a note to the page indicated that the information has been intentionally deleted; (9) revise Specification 3.8.3.1 to specify that the Limiting Condition for Operation applies to primary and backup containment penetration conductor overcurrent protective devices associated with each containment electrical penetration shall be operable, add a phrase to indicate that the scope of these protective devices excludes those circuits for which credible fault currents would not exceed the electrical penetration design rating, and delete the phrase that references appropriate plant instructions in the action statement; (10) delete the phrase that references appropriate plant procedures from Specification 4.8.3.1; (11) delete the phrase from SR 4.8.3.1.a.3 that indicates that a complete listing of all fuses to be verified in accordance with the requirement will be maintained in appropriate plant instructions; (12) replace the phrase ''appropriate plant instructions based on'' with ''procedures prepared in conjunction with'' in SR 4.8.3.1.b; (13) replace the reference to Table 3.8-2 in Specification 3.8.3.2 with a phrase that indicates that the Requirement is applicable to valves used in safety systems; (14) delete Table 3.8-2, ''Motor Operated Valves Thermal Overload Protection,'' and replace it with a note that indicates that the pages are intentionally blank; and (15) incorporate appropriate changes to the Bases to reflect these changes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of the component listings from the SQN TSs will not create an increase in the probability or consequences of any accident previously evaluated. Although no longer in the TSs, the components listed in Tables 3.6-1, 3.6-2, and 3.8-2 will be contained in administratively controlled documents. This equipment must be tested at the required intervals and each unit's action statements must still be adhered to. These procedures are revised and approved in accordance with requirements of TS Section 6.5.1A. This review process also requires an evaluation based on 10 CFR 50.59 requirements. As indicated in GL 91-08, this is adequate control for changes to these components lists.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The removal of the component lists from the TSs does not modify safety-related equipment or systems, nor does it change any safety-related setpoints used to prevent or mitigate previously analyzed accidents. The component lists are presently located in separate documents that are subject to the requirements of 10 CFR 50.59. Also, the limiting condition of operation requirements remain in effect and appropriate actions will be taken if any limits are exceeded. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of the previously discussed component lists from the TS. Appropriate measures presently exist to control the setpoint of the components listed. Any changes to these setpoints are controlled by the SQN design change process that is subject to the requirements of 10 CFR 50.59 in which the reduction of the present margin of safety is addressed. The proposed amendment continues to require operation within the set values for these components, and appropriate actions to be taken when or if the limits are exceeded. Based on these controls, this amendment will not involve a reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of amendment request:* March 24, 1995

*Description of amendment request:* The licensee has requested a one-time extension of the performance intervals for certain Technical Specification Surveillance Requirements (SR). Affected SRs include penetration leak rate testing, valve operability testing, instrument calibration, response time testing, and logic system functional tests. The proposed changes are requested to support refueling outage 5 scheduled to begin no later than February 15, 1996.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change requests a one-time extension of the surveillance intervals related to: a) RPS Instrumentation calibration, LSFTs, and response time testing; b) Isolation Actuation System Instrumentation calibration, LSFTs, and response time testing; c) ECCS Actuation Instrumentation calibration, LSFTs, and response time testing; d) Control Rod Block Instrumentation calibration and LSFTs; e) Remote Shutdown Instrumentation and Controls calibration and operability testing; f)

Accident Monitoring Instrumentation calibration; g) Plant Systems Instrumentation calibration and LSFTs; h) Primary Containment automatic valve actuation; i) Reactor Coolant System Pressure Isolation Valve (PIV) testing; j) system automatic initiation testing; and, k) Emergency Diesel Generator inspection and testing.

Also proposed is the re-establishment of the baseline for the ''N times 18 months'' cumulative surveillance interval for response time testing.

The discussion in the License Amendment Request demonstrates the following:

i) Rosemount transmitter calibration period extension is acceptable based on Rosemount D8900126, Revision A which supported extension of the calibration interval from 18 months to 30 months based on the reduction in the drift allowance;

ii) Extrapolation of plant specific calibration data is acceptable in supporting the extension of other calibration surveillance intervals to RFO-5;

iii) LSFT interval extension is acceptable based on the NRC Safety Evaluation Report (Peach Bottom Atomic Power Plant, Units 2 and 3, dated August 2, 1993) which supported extension of the interval for LSFT from 18 to 24 months. This was based on the small probability of relay or contact failure relative to mechanical component failure probability and, therefore, the increase in LSFT interval represented no significant change in the overall safety system unavailability;

iv) Response time testing interval extension for Isolation Actuation and ECCS Actuation instrumentation channels is acceptable based on the BWR Owners Group (BWROG) Licensing Topical Report NEDO-32291 (January 1994) which provided the necessary justification for elimination of response time testing and, therefore, provides a suitable argument for extending the interval for a short period of time. The NRC approved the use of NEDO-32291 as a basis for License Amendment Requests, with additional conditions specified, in a letter to the BWROG in December 1994.

v) Response time testing interval extension for RPS Instrumentation channels is acceptable because: i) there are redundant sensors that can initiate the scram function; ii) one-out-of-two redundancy exists in every individual instrument channel within each trip function; iii) several redundant and diverse instrument channels are provided which can detect and generate a scram signal; iv) the failure probability is a small fraction of the total control rod insertion (scram) failure probability; v) failure of instrumentation in the sluggish mode is a small fraction of its overall failure modes; and iv) NRC Safety Evalution Report dated August 2, 1993 (Peach Bottom Atomic Power Station, Units 2 and 3 docket) has previously provided approval for extension of the RPS response time testing surveillance interval from 18 to 24 months.

vi) Response time testing interval extension for the Main Steam Line isolation is acceptable because i) redundancy and diversity exist in individual instrument channels within a trip function; ii) instrumentation response time is a small fraction of the overall response time of the actuating device; iii) instrumentation failure probability is a very small portion of the total MSIV failure probability; and, iv) failure of instrumentation in the sluggish responding mode is a small fraction of its overall failure modes.

vii) Containment Isolation Valve leakage determination and actuation interval extension is acceptable based on: i) redundancy provided in the design of the penetrations; ii) the periodic testing of the valves during power operation; and, iii) the short period of time the interval is being extended.

viii) Reactor Coolant System PIVs have exhibited low as-found leak rates as measured during the last refueling outage; there is substantial margin available for the PIVs from the as-left leakage to the allowed TS leakage; the requested extension of the surveillance interval is small; and the conclusion of NUREG-1463, ''Regulatory Analysis for the Resolution of Generic Safety Issue 105: Interfacing System Loss-of-Coolant Accident in Light Water Reactors'' (July 1993), and the confirmation of the PNPP Individual Plant Examination that the ISLOCA (for which PIVs are provided to prevent) is not a risk concern to BWRs or PNPP.

ix) System initiation and actuation testing interval is acceptable based on the periodic testing of components during power operation and the short period of time the interval is being extended.

x) Emergency Diesel Generator testing interval extension is acceptable based on: i) the past testing results which support extension for the short period of time; ii) the testing that is done during power operation; and, iii) the short period of time the interval is being extended.

xi) The re-establishment of the baseline for the ''N times 18 months'' cumulative surveillance interval for response time testing is acceptable in that the extension of the cumulative interval would not be for more than the individual extension requested and justified herein.

Therefore, from the above it is shown that the proposed change will not significantly increase the probability of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change requests a one-time extension of the surveillance intervals for instrument calibration, instrument channel LSFT and response time testing, containment isolation valve leakage determination and actuation, PIV leak rate determination, system actuation testing, and diesel generator inspection and testing. The proposed changes do not necessitate a physical alteration to the plant (no new or different type of equipment will be installed). The requested extension durations are small as compared to the overall interval allowed by TS; drift data supports extension of the calibration intervals; NRC and industry evaluations support extension of LSFT; industry evaluations and redundancy in system design support extension of response time testing; past testing and periodic testing provides confidence of no effect on equipment availability by extending the confidence of no effect on equipment availability by extending the surveillance interval. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

In addition, the requested re-establishment of the baseline at RFO-5 for the ''N time 18 months'' cumulative surveillance interval for response time testing is acceptable in that the cumulative surveillance interval will not be extended by more than that which is proposed for individual response time tests during RFO-5. The individual response time test surveillance interval extensions have been justified herein. The justification for individual response time test surveillance interval extensions applies to the cumulative surveillance interval extension which is requested and will be granted by allowing the re-establishment of the baseline of the ''N times 18 months'' surveillance interval to the response time testing dates for those response time tests to be performed during RFO-5. The proposed changes do not necessitate a physical alteration to the plant (no new or different type of equipment will be installed). Therefore, the change does not create the possibility of a new or different kind of accident.

3. The proposed change will not involve a significant reduction in the margin of safety.

The proposed TS change requests a one-time extension of the surveillance intervals for instrument calibration, instrument channel LSFT, and response time testing, containment isolation valve leakage determination and actuation, PIV leak rate determination, system actuation testing, and diesel generator inspection and testing. The proposed changes do not necessitate a physical alteration to the plant (no new or different type of equipment will be installed). In that the requested extension durations are small as compared to the overall interval allowed by TS, drift data supports extension of the calibration intervals, NRC and industry evaluations support extension of LSFT, industry evaluations and redundancy in system design support extension of response time testing, past testing and periodic testing provides confidence of no effect on equipment availability by extending the surveillance interval, the change does not involve a significant reduction in the margin of safety.

In addition, the requested re-establishment of the baseline at RFO-5 for the ''N times 18 months'' cumulative surveillance interval for response time testing is acceptable in that the cumulative surveillance interval will not be extended by more than that which is proposed for individual response time tests during RFO-5. The individual response time test surveillance interval extensions have been justified herein. The justification for individual response time test surveillance interval extensions applies to the cumulative surveillance interval extension which is requested and will be granted by allowing the re-establishment of the baseline of the ''N times 18 months'' surveillance interval to the response time testing dates for those response

time tests to be performed during RFO-5. The proposed changes do not necessitate a physical alteration to the plant (no new or different type of equipment will be installed). Therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Gail H. Marcus

**The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio**

*Date of amendment request:* April 3, 1995

*Description of amendment request:* The proposed amendment would add new programmatic requirements governing radiological effluent into the Administrative Controls section of the Technical Specifications in accordance with Generic Letter 89-01, ''Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and alter only the format and location of programmatic controls and procedural details relative to radioactive effluent, radiological environmental monitoring, solid radioactive wastes, and associated reporting requirements. Compliance with applicable regulatory requirements will continue to be maintained. In addition, the proposed changes do not alter the conditions or assumptions in any of the Updated Safety Analysis Report (USAR) accident analyses. Since the USAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not involve any changes to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amounts of any radioactive effluent released offsite. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes do not involve any actual change in the methodology used in the control of radioactive effluents, solid radioactive wastes, or radiological environmental monitoring. These changes are considered administrative in nature, provide for the relocation of procedural details outside the Technical Specifications, and add appropriate administrative controls in the Technical Specifications to provide continued assurance of compliance with applicable regulatory requirements. These proposed changes also comply with the guidance contained in Generic Letter 89-01. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Perry Public Library, 3753 Main Street, Perry, Ohio 44081

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Gail H. Marcus

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of amendment request:* February 24, 1995

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) Surveillance Requirement 4.6.1.7.4 and its associated Bases to delete the quarterly verification of the measured leakage rate for containment mini-purge supply and exhaust isolation valves.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision does not involve a significant hazards consideration because operation of Callaway Plant with this change would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to the T/S will not adversely impact plant safety since the requirement to perform the quarterly surveillance will still be implemented to verify valve leakage and seal degradation. The mini-purge valves will still perform their intended safety function to close within 5 seconds after receipt of an isolation signal.

2) Create the possibility of a new or different kind of accident from any previously evaluated.

There are no design changes being made that would create a new type of accident or malfunction and the method and manner of plant operation remain unchanged. Deletion of the individual leakage rate for these valves does not affect the severity of any accident previously evaluated. The consequences of a valve failure or malfunction are not increased by the removal of the acceptance criteria, leakage rate will still be measured on a quarterly basis as is currently done to determine if the seals are degrading.

3) Involve a significant reduction in a margin of safety.

There are no changes being made to the safety limits or safety system settings that would adversely impact plant safety. The valves will still be surveilled on a quarterly basis to verify leakage and seal degradation to assure gross failure will not occur and that containment integrity is maintained.

Based on the above discussions, it has been determined that the requested Technical Specification change does not involve a significant increase in the probability or consequences of an accident or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037

*NRC Project Director:* Gail H. Marcus

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of amendment request:* April 17, 1995

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) Table 2.2-1 and associated Bases to reduce repeated alarms and partial reactor trips related to the C-4 control system interlock and the Overpower Delta-T (OP[delta]T) reactor trip setpoint.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision does not involve a significant hazards consideration because operation of Callaway Plant with this change would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the accident analyses documented in Final Safety Analyses Report (FSAR) Chapter 15, WCAP-10961-P for Category 1 plants such as Callaway, and WCAP-11883 since no hardware changes are proposed.

The OP[delta]T reactor trip function provides protection against excessive power (fuel rod integrity protection within the fuel temperature design basis). No credit is taken for the OP[delta]T trip in the Chapter 15 licensing basis accident analyses. The [delta]T trip function is credited in non-licensing basis analyses of various steamline breaks.

The OP[delta]T trip will continue to function in a manner consistent with the plant design basis. There will be no change to the OP[delta]T safety analysis limit listed in FSAR Table 15.0-4. Therefore, there will be no degradation in the performance of or an increase in the number of challenges to equipment assumed to function during an accident situation.

The reactor trip system response time, as defined in the Technical Specifications, will be unaffected.

These Technical Specification revisions do not involve any hardware changes nor do they affect the probability of any event initiators. There will be no change to normal plant operating parameters or accident mitigation capabilities. Therefore, these changes will not increase the probability or consequences of an accident or malfunction.

2) Create the possibility of a new or different kind of accident from any previously evaluated.

As discussed above, there are no hardware changes associated with these Technical Specification revisions nor are there any changes in the method by which any safety-related plant system performs its safety function. Revisions to the OP[delta]T values for $K_4$ and $K_6$ will require scaling changes for summing amplifier cards (NSA cards) in the 7300 Process Protection System. These scaling changes are straightforward and similar in nature to those performed to implement OL Amendments 72 and 84 associated with the implementation of relaxed axial offset control (RAOC) and a revised OT[delta]T $f_1$([delta]I) penalty function. These scaling changes will not affect the normal manner of plant operation. There will be a reduction in the incidence of C-4 alarms and partial reactor trips. There will be less of a need to reduce power during on-line surveillance testing.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. Therefore, the possibility of a new or different kind of accident is not created.

3) Involve a significant reduction in a margin of safety.

There will be no change to the Overpower [delta]T safety analysis limit listed in FSAR Table 15.0-4. Available setpoint calculation margin will be used to increase the $K_4$ value, reflected as a new bias on a summing amplifier card in each of the four protection loops. This will also require corresponding decreases in the OP[delta]T Total Allowance and Allowable Value in Technical Specification Table 2.2-1. Available margin in the OP[delta]T trip protection function will be used to decrease the $K_6$ value, reflected as a new gain on a summing amplifier card in each of the four protection loops.

As discussed above, the response time of the OP[delta]T reactor trip function will remain unchanged.

It has been confirmed that the Z and S terms currently listed in Table 2.2-1 for the OP[delta]T trip function will remain conservative. The change in $K_4$ will result in a decrease in the Total Allowance and Allowable Value for OP[delta]T; however, this does not affect any margin of safety since the safety analysis limit, which preserves the overpower safety margin, is unchanged.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, DNBR limits, $F_Q$, F[delta]H, LOCA PCT, peak local power density, or any other margin of safety.

Based upon the preceding information, it has been determined that the proposed changes to the Technical Specifications do not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037

*NRC Project Director:* Gail H. Marcus

**Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of amendment request:* October 28, 1994

*Description of amendment request:* The proposed amendment would remove the Neutron Monitoring System (NMS) and Control Rod Position instrumentation from the Vermont Yankee Technical Specifications for post-accident monitoring. Administrative changes are also proposed.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change to remove the NMS and Control Rod Position instrumentation from the Technical Specifications for post-accident monitoring is consistent with NRC requirements concerning this instrumentation.

Wide Range Neutron Flux (NMS instrumentation) is presently included in the [boiling water reactor] BWR Standard Technical Specifications, but the NRC has recently determined [letter, USNRC to VYNPC, dated April 29, 1993] that this instrumentation need not meet R.G. 1.97 Category 1 criteria and that licensees may request the removal of this instrumentation from their post-accident monitoring Technical Specifications. Control Rod Position instrumentation is considered R.G. 1.97 Category 3 which is required to meet the least stringent design and qualification criteria as specified in this regulatory guide.

Testing, calibration and maintenance of this instrumentation will continue to assure operability of instrumentation. The portions of the NMS and the Control Rod Position instrumentation systems to be removed from the post-accident monitoring Technical Specifications do not perform any automatic control or trip function. In addition, this instrumentation does not provide information that is required to permit the control room operator to take manual actions that are required for safety systems to accomplish their safety functions for design basis accident events.

At a BWR, when all control rods are inserted, these control rods cannot be withdrawn without deliberate operator action. The proposed change does not result in any system hardware modification or new plant configuration. The requested change to post-accident monitoring instrumentation does not impact any [Final Safety Analysis Report] FSAR safety analysis involving the NMS or Control Rod Position System. These monitoring functions are not contributors to the initiation of accidents.

The administrative changes to correct a typographical error and instrument ranges will have no effect on plant hardware, plant design, safety limit setting or plant system operation and therefore, do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

Therefore, it is concluded that there is not a significant increase in the probability or consequences of an accident previously evaluated.

2. The function of the instrumentation to be removed from the Technical Specifications is for monitoring only. These indications are not necessary for operators to accomplish any safety functions.

The proposed change does not involve any change in hardware, Technical Specification setpoints, plant operation, redundancy, protective function or design basis of the plant. There is no impact on any existing safety analysis or safety design limits. NMS and Control Rod Position monitoring functions do not initiate nuclear system parameter variations which are considered potential initiating causes of threats to the fuel and the nuclear system process barrier.

As discussed above, the proposed administrative change only corrects a typographical error concerning equipment identification numbers and listed instrument ranges. This change does not affect any equipment and they do not involve any potential initiating events that would create any new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change to remove the NMS and Control Rod Position instrumentation from the Technical Specifications for post-accident monitoring does not affect any existing safety margins. The original NMS design basis for BWRs never required a post-accident neutron monitoring function since there are no design basis accidents that rely on operator action to control reactor power. This is also true for Control Rod Position monitoring.

Existing Technical Specifications requirements for automatic trip functions are unaffected. Failure of the indication of reactor power from the NMS or the Control Rod Position System does not preclude the ability of the reactor operator to determine reactor power levels. Alternate indications are available to ascertain reactor power. These include reactor coolant boron concentrations, flux levels from the Traversing Incore Probe (TIP) System and the status of plant parameters which are linked to reactor power. In addition, alternate means of determining reactor power have been incorporated into the Emergency Operating Procedures (EOPs).

Operation, testing and maintenance of this instrumentation will remain the same. System functions are the same. Post-accident functional design criteria as described in [BWR Owners Group Topical Report NEDO-31558-A, dated March 29, 1993], and approved by the NRC are satisfied by present equipment installed at VY. NMS instrumentation is still included in the Technical Specifications for the [Reactor Protection System] RPS. Control Rod Position instrumentation does not perform any safety function.

As discussed above, the proposed administrative changes do not affect any equipment involved in potential initiating events or safety limits.

Based upon the above, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

Based upon the above, we conclude that the proposed change does not constitute a significant hazards consideration as defined in 10CFR50.92(c).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

*Attorney for licensee:* John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, MA 02110-2624

*NRC Project Director:* Phillip F. McKee

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* March 30, 1995

*Description of amendment request:* The licensee is requesting temporary changes to Technical Specifications (TS) 3.7.3.1, ''Component Cooling Water Subsystem - Operating,'' and 3.7.4.1, ''Service Water System - Operating,'' for NA-1&2. The proposed TS changes will allow one of the two service water loops to be isolated from the component cooling water heat exchangers during power operation in order to refurbish the isolated service water headers.

NA-1&2 is currently pursuing refurbishment of the 18-inch, 20-inch and 24-inch diameter service water supply and return lines to/from the NA-1 and NA-2 component cooling heat exchangers (CCHXs). Refurbishment of this piping presents a challenge in that it is not possible to isolate and plug or blank the section to be worked in a 7-day time period. The purpose of the proposed change is to request temporary changes to the existing servicewater (SW) and component cooling water (CC) TS to permit orderly and efficient conduct of the pipe refurbishment project during two-unit power operation. Specifically, the licensee is proposing to temporarily change TS 3.7.4.1 ''Service Water System - Operating'' to allow operation of the SW system with one independent source of SW to/from the NA-1 and NA-2 CCHXs for two periods of up to 49 days each. This proposed change also allows the automatic closure feature of the SW valves to/from the CCHXs to be defeated during the 49-day periods. In addition, the licensee proposes to temporarily change TS 3.7.3.1 ''Component Cooling Water Subsystem - Operating'' with a footnote which considers the CC subsystems OPERABLE with only one independent source of SW provided to/from the CCHXs during these 49-day periods. Further, the proposed change would allow that during operation with only one SW header available to/from the CCHXs, the provisions of Specification 3.0.4 would not be applicable provided two SW loops are capable of providing cooling for the other operable plant components.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

**Specifically, operation of North Anna Power Station in accordance with the proposed Technical Specifications changes will not:**

Involve a significant increase in the probability or consequences of an accident previously evaluated.

The piping refurbishment project and the proposed temporary changes to the SW and CC Technical Specifications have been evaluated to assess their impact on the normal operation of the SW and CC systems and to ensure that the design basis safety functions of each system are preserved. The SW system is required to function during all normal and emergency operating conditions. During normal plant operation, the SW system provides cooling water to the CCHXs, charging pump coolers, instrument air compressor coolers, and control room chiller condensors of both units. During the two 49-day periods, one header will [operate] with its 24-inch piping to/from the CCHXs temporarily blanked. To avoid operation of the SW pump at abnormal conditions (low flow) on this ''partially deadlocked'' header, a temporary cross-connect will be installed to by-pass the CCHXs.

SW system operation with the cross-connect installed was evaluated for design basis accident (DBA) conditions. The DBA condition for the SW system is a loss-of-coolant accident on one unit with simultaneous loss-of-offsite-power to both units. A SW system hydraulic analysis has been performed to verify that adequate flow is provided to the containment recirculation spray heat exchangers (RSHXs) with the temporary cross-connect installed and throttled open assuming the occurrence of the most limiting single failure. Therefore, there is no increase in probability or consequences of the DBA condition.

Utilizing only one SW header to supply flow to the CCHXs has the potential to affect the reliability of the CC system and all of the equipment cooled by CC. The activities to be performed during the refurbishment project and the various system alignments required have been evaluated using the Individual Plant Examination (IPE) Probabilistic Safety Assessment (PSA) model for North Anna Power Station. This model is used in a manner that is generally consistent with the Nuclear Energy Institute (NEI)/Electric Power Research Institute (EPRI) draft PSA Applications Guide (Revision H). The effect on the PSA model is a slight increase in the frequency of reactor trips and an increase in the probability of RHR failure.

The increased frequency of reactor trips is due to the decreased reliability of the CC system to supply cooling to the reactor coolant pump (RCP) motors. When only one SW header is available to the CCHXs, the increased frequency of losing this single header can be conservatively estimated by combining the failure probability of both SW pumps (approximately 1.5E-4 based on IPE PSA data). Also considered was the frequency of pipe rupture anywhere in the single available header. When the single SW header fails to supply cooling to the CCHXs, the CC system will heatup causing inadequate cooling for sustained operation of the RCPs. Tripping these pumps results in a reactor trip. The second SW header can be expected to supply other equipment with cooling. A sensitivity analysis shows the increase in CDF as a result of the increased reactor trip frequency to be less than 1E-8 per year.

The CC system is also included in the PSA model as a support system for RHR cooling. The RHR system is used to reduce reactor coolant system temperatures from 350°F (hot shutdown) to 140°F (cold shutdown). The only accident initiator that requires the unit to be cooled down and placed on RHR cooling are sequences which are initiated with a steam generator tube rupture. (Note that, for the North Anna plant design, RHR is separate from the safety injection system and the low head safety injection pumps.) The increased probability for the loss of RHR when only one SW header is available to the CCHXs is estimated using fault tree analysis and is dominated by the failure of both SW pumps. The probability for the loss of both SW pumps aligned to the CCHXs is estimated to be 1.5E-4. The effect of this increase in RHR failure probability was determined by adding this probability to the top single event in the RHR function and recalculating the new CDF. The resulting increase in CDF as a result of RHR system failure following a steam generator tube rupture is less than 1E-8 per year.

The CC system is further included in the PSA model as part of the loss of RCP seal cooling as an initiating event and as a loss of function during other initiating event scenarios. The effect on the probability for a loss of RCP seal cooling due to losing CC cooling to the RCP thermal barriers is negligible due to the high reliability of the charging system to provide seal injection.

The total effect of this pipe refurbishment project was estimated by a sensitivity analysis combining both the change in the reactor trip initiating event frequency and the increased failure probability of RHR resulting in less than a 1E-6 per year increase in CDF. Since this project will not affect the containment systems, there would not be any significant change in off-site dose, except that resulting directly from the increase in CDF. These minor increases in CDF and off-site dose are less than what is defined as risk significant in the NEI/EPRI draft PSA Applications Guide.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed temporary Technical Specifications changes do not affect the basic method of operation of the SW or CC systems. The purpose of the proposed changes is to permit extended operation of the CC system with one independent source of SW cooling. During the project, there will be a significant time period when all the CCHXs are aligned to one SW loop, the possibility of an interruption of SW supply to the heat exchangers during a DBA is eliminated by defeating the closure of the 24-inch SW isolation MOVs to the CCHXs on a SI/CDA signal. Both SW headers will be available for equipment required for safe shutdown of the units (i.e., RSHXs, charging pumps, and CR/ESGR chillers). The SW pipe repair activities and the installation/removal of the SW cross-connect piping do not create the possibility for a malfunction of equipment different than previously evaluated. Therefore, implementation of the restoration project and approval of the proposed Technical Specifications changes will not introduce any new accident initiators nor affect the performance of accident mitigation systems.

3. Involve a significant reduction in a margin of safety.

The proposed changes to the schedule only provide operational flexibility to perform the required SW pipe refurbishment. The Technical Specifications continue to require the SW and CC systems to remain functional during the period with a single SW supply to the CCHXs. As stated in item (1) above, the SW system is fully capable of performing its DBA function during the course of the pipe refurbishment project with the proposed Technical Specification changes in place. The effect of this pipe refurbishment project on CC system reliability was estimated by a sensitivity analysis combining both the change in the reactor trip initiating event frequency and the increased failure probability of RHR resulting in less than a 1E-6 per year increase in CDF. Since this project will not affect the containment systems, there would not be any significant change in off-site dose, except that resulting directly from the increase in CDF. These minor increases in CDF and off-site dose are less than what is defined as risk significant in the NEI/EPRI draft PSA Applications Guide. Therefore, there is not a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* David B. Matthews

## Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

### Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

*Date of application for amendments:* March 31, 1995

*Brief description of amendments:* The proposed amendments would provide an exception to Technical Specification (TS) 3.0.4. TS 3.0.4 allows entry of a unit into another operational condition only if the conditions of the Limiting Conditions for Operation (LCOs) are met without reliance on TS action statements. The exception requested by

the licensee would allow a change in a unit's operational condition in a specific situation in which the unit's LCO concerning the minimum number of operable offsite power circuits is not fully satisfied. Specifically, the exception would allow an operational mode change of a unit if the second unit is in Operational Condition 4 or 5 (i.e., cold shutdown or refueling) and one of the second unit's offsite power circuits is inoperable.

Date of publication of individual notice in **Federal Register:** April 13, 1995 (60 FR 18860)

*Expiration date of individual notice:* May 15, 1995

*Local Public Document Room location:* The University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

**Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania**

*Date of amendment request:* April 10, 1995, as supplemented April 12, 1995

*Brief description of amendment request:* The proposed amendment would revise Technical Specification (TS) 4.6.2.2.d to delete the reference to the specific test acceptance criteria for the Containment Recirculation Spray Pumps and replace the specific test acceptance criteria with reference to the requirements of the Inservice Testing (IST) Program. In addition, the 18-month test frequency would be replaced with the test frequency requirements specified in the IST Program. The current footnote (1) pertaining to the performance of recirculation spray pump 2RSS*P21A would be deleted.

*Date of publication of individual notice in* **Federal Register:** April 18, 1995 (60 FR 19417)

*Expiration date of individual notice:* May 18, 1995

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of amendment request:* April 14, 1995

*Description of amendment request:* The proposed amendment would revise the Technical Specifications to allow the use of the Westinghouse Electric Corporation sleeving process for repairing steam generator tubes.

*Date of publication of individual notice in* **Federal Register:** April 21, 1995 (60 FR 19969)

*Expiration date of individual notice:* May 22, 1995

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

**Notice Of Issuance Of Amendments To Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

**Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Date of application for amendments:* July 22, 1994, as supplemented on March 6, 1995

*Brief description of amendments:* The amendments change the Technical Specifications to implement a performance based assessment program, including corresponding organizational and functional changes. Specifically, the changes affect the independent review function, the independent assessment of plant activity and the Independent Safety Engineering Group. These functions will be performed by the Nuclear Assessment Section (NAS). The NAS's fundamental role will be to: (1) assist plant management in the early identification of issues that may prevent the plant from achieving quality, and (2) ensure effective correction of deficiencies.

*Date of issuance:* April 18, 1995

*Effective date:* April 18, 1995

*Amendment Nos.:* 177 and 208

*Facility Operating License Nos.* DPR-71 and DPR-62. Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 31, 1994 (59 FR 45017) The March 6, 1995, submittal added Radiation Protection to the list of assessments in TS 6.5.5.2 and reworded Section 6.5.4.4, but did not change the no significant hazards consideration determination as published in the **Federal Register.** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 18, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

**Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina**

*Date of application for amendment:* June 18, 1992, as supplemented December 8, 1992 and February 3, 1995

*Brief description of amendment:* The amendment adds limiting conditions of operation and surveillance requirements for the pressurizer power-operated relief valves and their associated block valves whenever average temperature is above 350 degrees F or the reactor is critical. Specifications are also added for low-temperature overpressure protection

whenever average temperature is less than 350 degrees F and the reactor coolant system is not vented to the containment.

*Date of issuance:* April 14, 1995

*Effective date:* April 14, 1995

*Amendment No.:* 162

*Facility Operating License No.* DPR-23. Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 2, 1992 (57 FR 40208). Renoticed on March 1, 1995 (60 FR 11127) The December 8, 1992, letter corrected a typographical error and did not affect the no significant hazards consideration. The licensee's letter dated February 3, 1995, proposed a revision to the TS regarding block valve testing in accordance with Generic Letter 90-06 recommendations. The proposed change was noticed on March 1, 1995 (60 FR 11127). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

**Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina**

*Date of application for amendment:* November 4, 1994, as supplemented April 6, 1995.

*Brief description of amendment:* The amendment changes the testing frequency of the turbine overspeed protection valves from monthly to quarterly to implement an enhancement recommended by Generic Letter 93-05, ''Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation.'' The April 6, 1995 submittal provided clarifying information only, and did not change the proposed no significant hazards determination.

*Date of issuance:* April 27, 1995

*Effective date:* April 27, 1995

*Amendment No.:* 164

*Facility Operating License No.* DPR-23. Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 7, 1994 (59 FR 63115) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of application for amendment:* January 19, 1995, as supplemented March 20, 1995

*Brief description of amendment:* The amendment revises Technical Specification 4.0.3 and its associated Bases to provide for a delay period in which to perform a surveillance that was not performed within its specified frequency.

*Date of issuance:* April 17, 1995

*Effective date:* April 17, 1995

*Amendment No.:* 56

*Facility Operating License No.* NPF-63. Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 15, 1995 (60 FR 8742) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of application for amendment:* July 22, 1994, as supplemented March 6, 1995.

*Brief description of amendment:* The amendment implements a performance-based assessment program, including corresponding organizational and functional changes. Specifically, the changes affect the Independent Review (IR) function, the independent assessment of plant activity and the Independent Safety Engineering Group. These functions will be performed by the proposed Nuclear Assessment Section (NAS). The NAS will perform internal evaluations and assessment activities and serve as plant management's staff for the objective oversight of plant performance relating to nuclear safety, reliability, and quality. The NAS's fundamental role will be to: (1) assist plant management in the early identification of issues which may prevent the plant from achieving quality performance on a sustained basis; and (2) ensure effective correction of deficiencies.

*Date of issuance:* April 21, 1995

*Effective date:* April 21, 1995

*Amendment No.:* 57

*Facility Operating License No.* NPF-63. Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 31, 1994 (59 FR 45019) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

**Commonwealth Edison Company, Docket No. 50-374, LaSalle County Station, Unit 2, LaSalle County, Illinois**

*Date of application for amendment:* March 31, 1995

*Brief description of amendment:* The amendment revises the safety/relief valve (SRV) safety function lift setting allowable tolerance band from -3/+1% to plus or minus 3% and includes a requirement for the lift settings to be within plus or minus 1% of the technical specification limit following testing.

*Date of issuance:* April 25, 1995

*Effective date:* Immediately, to be implemented prior to restart from the sixth refueling outage.

*Amendment No.:* 89

*Facility Operating License No.* NPF-18: The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (60 FR 17590 dated April 6, 1995). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. This notice also provided for an opportunity to request a hearing by May 8, 1995, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated April 25, 1995.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

*Local Public Document Room location:* Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

**Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

*Date of application for amendment:* June 1, 1994, as supplemented on January 25, 1995, April 7, April 19, and April 26, 1995.

*Brief description of amendment:* The amendment revises Technical Specification Section 3.10 to allow extended Rod Position Indication (RPI) deviation limits and on-line calibration of the RPI channels for cycle 13 only.

*Date of issuance:* April 28, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 182

*Facility Operating License No.* DPR-26: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 20, 1994 (59 FR 37069). The January 25, April 7, April 19, and April 26, 1995, submittals provided clarifying information that did not affect the initial no significant hazards determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

**Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan**

*Date of application for amendment:* February 10, 1995, as supplemented March 27 and 30, 1995

*Brief description of amendment:* This amendment revises the Technical Specifications to allow a one-time deferral of several 18-month interval surveillance tests until the upcoming scheduled refueling outage to avoid the necessity of imposing a plant shutdown solely for the sake of their performance. In the March 30, 1995, letter the license also withdrew its request for deferral of several surveillance tests.

*Date of issuance:* April 20, 1995

*Effective date:* April 20, 1995

*Amendment No.:* 164

*Facility Operating License No.* DPR-20. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 1, 1995 (60 FR 11131) The March 27 and 30, 1995, letters provided clarifying information which was within the scope of the initial notice and did not affect the staff's original proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment and of the withdrawalof certain surveillance test deferrals is contained in a Safety Evaluation dated April 20, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Van Wylen Library, Hope College, Holland, Michigan 49423.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* February 23, 1995, as supplemented by letter dated March 21, 1995.

*Brief description of amendments:* The amendments revise Technical Specification (TS) 3.8.2.1 and TS 3.8.3.1 to allow installation of replacement equipment in response to an Electrical Distribution Systems Functional Inspection, conducted by the NRC in July 1991. The existing breaker arrangement could result in a trip of both the battery and main breakers if a fault occurs on one of the 125-V dc panelboards. The licensee committed to have these breakers replaced in 1995 with a better coordinated design to eliminate the concern.

*Date of issuance:* April 14, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* 155 and 137

*Facility Operating License Nos.* NPF-9 and NPF-17: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 8, 1995 (60 FR 12791) The March 21, 1995, letter provided clarifying information that did not change the scope of the February 23, 1995, application and the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of application for amendments:* September 2, 1992

*Brief description of amendments:* These amendments revise the Appendix A Technical Specifications relating to the required surveillance frequency for comparing the incore and excore axial imbalance. The revision requires comparison of the incore to excore axial imbalance at least once every 31 Effective Full Power Days above 15 percent of rated thermal power rather than once every 31 days above 15 percent of rated thermal power as was previously required.

*Date of issuance:* April 26, 1995

*Effective date:* April 26, 1995

*Amendment Nos.:* 186 and 67

*Facility Operating License Nos.* DPR-66 and NPF-73: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 14, 1992 (57 FR 47128) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 26, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas**

*Date of amendment request:* June 20, 1994

*Brief description of amendments:* The amendments relocated the requirements of the quality assurance program and the security and emergency plans from the administrative controls section of the technical specifications to the respective licensee-controlled documents.

*Date of issuance:* April 25, 1995

*Effective date:* 90 days from date of issuance

*Amendment Nos.:* 179 and 160

*Facility Operating License Nos.* DPR-51 and NPF-6. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 17, 1994 (59 FR 42340) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

**Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* August 5, 1993

*Brief description of amendment:* The amendment removed the requirements associated with loose-part detection

system from the Technical Specifications for Waterford Steam Electric Station, Unit 3. These requirements will be incorporated into the Waterford 3 Updated Final Safety Analysis Report and maintained under the provisions of 10 CFR 50.59.

*Date of issuance:* April 20, 1995

*Effective date:* April 20, 1995

*Amendment No.:* 104

*Facility Operating License No.* NPF-38. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 15, 1993 (58 FR 48382) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

**Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* April 4, 1995, as supplemented by letter dated April 5, 1995

*Brief description of amendment:* The amendment changed the Appendix A Technical Specifications (TSs) by revising the TSs for moderator temperature coefficient. The amendment approves a one time deviation by excluding the two-thirds end-of-cycle moderator temperature coefficient test requirement for Cycle 7.

*Date of issuance:* April 27, 1995

*Effective date:* April 27, 1995

*Amendment No.:* 105

*Facility Operating License No.* NPF-38. Amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes (60 FR 18431, dated April 11, 1995). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 11, 1995, but stated that any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated April 27, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

**Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of application for amendment:* October 12, 1994

*Brief description of amendment:* The amendment removed License Condition 2.C.(26) related to Turbine Disk Integrity.

*Date of issuance:* April 17, 1995

*Effective date:* April 17, 1995

*Amendment No:* 121

*Facility Operating License No.* NPF-29. Amendment revises the license.

*Date of initial notice in* **Federal Register:** November 9, 1994 (59 FR 55868) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 1995. No significant hazards consideration comments received: No

*Local Public Document Room location:* Judge George W. Armstrong Library, 220 S. Commerce Street, Natchez, MS 39120.

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of application for amendments:* May 23, 1994

*Brief description of amendments:* These amendments will relocate the seismic monitoring instrumentation Limiting Conditions of Operation, Surveillance Requirements and the associated tables contained in Technical Specifications 3.3.3.3, 4.3.3.3.1 and 4.3.3.3.2 to the Updated Final Analysis Report.

*Date of issuance:* April 25, 1995

*Effective date:* April 25, 1995

*Amendment Nos.:* 135 and 74

*Facility Operating License Nos.* DPR-67 and NPF-16: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 6, 1994 (59 FR 34664) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003.

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia**

*Date of application for amendments:* January 20, 1995

*Brief description of amendments:* The amendments revise the administrative requirements of Technical Specification (TS) 6.4.1.2 related to the areas of technical expertise that must be represented on the Plant Review Board (PRB). The licensee proposed this change in order to maintain an appropriate level of PRB expertise after the implementation of a planned reorganization that includes combining certain departments that are listed separately in the current TS 6.4.2.1 requirements.

*Date of issuance:* April 27, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days

*Amendment Nos.:* 84 and 62

*Facility Operating License Nos.* NPF-68 and NPF-81: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 6, 1995 (60 FR 7077) The April 4, 1995, letter provided additional and clarifying information that did not change the scope of the January 20, 1995, application or the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 1995. No significant hazards consideration comments received: No

*Local Public Document Room location:* Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* November 8, 1994, as supplemented by letter dated March 14, 1995.

*Brief description of amendments:* The amendments require that only one of the two battery chargers associated with each Class 1E 125-VDC Channel I and Channel IV is operable.

*Date of issuance:* April 17, 1995

*Effective date:* April 17, 1995, to be implemented within 31 days.

*Amendment Nos.:* Unit 1 - Amendment No. 73; Unit 2 - Amendment No. 62

*Facility Operating License Nos.* NPF-76 and NPF-80. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 7, 1994 (59 FR 63123) The March 14, 1995, supplement withdrew that portion of the proposed amendments where the required wording was already incorporated into the Technical Specifications by amendments issued on February 14, 1995, in response to another amendment request. The March 14, 1995, letter also provided clarifying information and did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 17, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

**IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of application for amendment:* November 10, 1994, as supplemented March 1, 1995

*Brief description of amendment:* The amendment revises the Duane Arnold Energy Center Technical Specification Section 3.2.A to refer to the Offsite Dose Assessment Manual for the setpoint of the Offgas Stack Radiation Monitor and makes the ''Applicable Operating Mode'' and the ''Action'' statements for these instruments consistent with the required function. The Action statement for the other instruments which initiate Secondary Containment isolation is also revised to be consistent with the current practice and with the function of those instruments. The Basis is also revised to add further description of the function and requirements.

*Date of issuance:* April 25, 1995

*Effective date:* April 25, 1995

*Amendment No.:* 209

*Facility Operating License No.* DPR-49. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 21, 1994 (59 FR 65815) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 1995.The March 1, 1995, submittal provided supplemental information that did not change the initial proposed no significant hazards consideration determination.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

**Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan**

*Date of application for amendments:* April 6, 1994

*Brief description of amendments:* The amendments delete part of License Condition 2.C.(4) to Operating License No. DPR-58 and part of License Condition 2.C.(3)(o) to Operating License No. DPR-74 on fire protection. The related fire protection safety evaluation also changes three of the modifications listed in Table 1 of the Safety Evaluation Report of July 31, 1979, that supported amendments nos. 31 and 12 to Operating Licenses No. DPR-58 and No. DPR-74, respectively.

*Date of issuance:* April 19, 1995

*Effective date:* April 19, 1995

*Amendment Nos.:* 194 and 180

*Facility Operating License Nos.* DPR-58 and DPR-74. Amendments revised the Facility Operating Licenses.

*Date of initial notice in* **Federal Register:** September 28, 1994 (59 FR 49429) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York**

*Date of application for amendment:* March 9, 1995

*Brief description of amendment:* The amendment revises Technical Specification Section 4.6.1.2.a, Primary Containment/Containment Leakage. This change allows the second Type A containment leak rate test to be performed at refueling outage 5 instead of refueling outage 4, consistent with an exemption to 10 CFR Part 50, Appendix J which has been granted.

*Date of issuance:* April 24, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 65

*Facility Operating License No.* NPF-69: Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 23, 1995 (60 FR 15310) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of application for amendment:* December 2, 1994

*Brief description of amendment:* The amendment changes the Millstone 3 Technical Specification Table 4.3-1 by adding a note for certain Functional Units which would allow an entry into Mode 2 or Mode 1 before performing calibration for the power range detectors.

*Date of issuance:* April 26, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 109

*Facility Operating License No.* NPF-49. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1995 (60 FR 6304) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1995. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New LondonTurnpike, Norwich, CT 06360.

**Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota**

*Date of application for amendments:* February 23 and March 3, 1995

*Brief description of amendments:* The amendments revise the Prairie Island Technical Specifications section 4.4.A.5 to add the phrase ''and all approved exemptions.'' after the reference to 10 CFR Part 50, Appendix J. This revision will allow implementation of approved exemptions from the testing schedule requirements of 10 CFR Part 50, Appendix J, Section III.D.1.(a).

*Date of issuance:* April 18, 1995

*Effective date:* April 18, 1995, with full implementation within 30 days.

*Amendment Nos.:* 117 and 110

*Facility Operating License Nos.* DPR-42 and DPR-60. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 15, 1995 (60 FR 14025). The March 3, 1995, letter provided clarifying information within the scope of the original submittal and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 18, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of application for amendments:* August 17, 1994 (Reference LAR 94-06)

*Brief description of amendments:* The proposed amendments increase the allowed outage time of the refueling water storage tank (RWST) for adjustment of boron concentration from one to eight hours as contained in Technical Specifications Section 3.5.5.

*Date of issuance:* April 14, 1995

*Effective date:* April 14, 1995, to be implemented within 30 days of issuance

*Amendment Nos.:* Unit 1 - Amendment No. 101; Unit 2 - Amendment No. 100

*Facility Operating License Nos.* DPR-80 and DPR-82: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 12, 1994 (59 FR 51621) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

**PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* October 25, 1994 as supplemented February 13, 1995.

*Brief description of amendments:* The amendment clarifies the technical specification surveillance requirements and bases for high pressure coolant injection system testing at low reactor pressure.

*Date of issuance:* April 18, 1995

*Effective date:* April 18, 1995Amendments Nos.: 200 and 202

*Facility Operating License Nos.* DPR-44 and DPR-56: The amendments revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (59 FR 55498 dated November 7, 1994). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination, and also provided an opportunity to request a hearing by December 7, 1994. No comments or requests for hearings have been received. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1995.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-278, Peach Bottom Atomic Power Station, Unit No. 3, York County, Pennsylvania**

*Date of application for amendment:* January 13, 1995 as supplemented by letters dated March 14, 1995 and April 12, 1995.

*Brief description of amendment:* The requested changes would modify Tables 3.7.1 and 3.7.4 of the Technical Specifications (TS) to reflect a change in the number of primary containment penetrations and isolation valves associated with the traversing in-core probe (TIP) system. In order to prevent confusion with the staff's review of PECO's September 29, 1994 application to implement improved TS at Peach Bottom, the staff is issuing the license amendment regarding the TIP system for Unit 3 only.

*Date of issuance:* April 24, 1995

*Effective date:* April 24, 1995

*Amendment No.:* 203

*Facility Operating License No.* DPR-56: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 1, 1995 (60 FR 11139) The March 14, 1995 and April 12, 1995, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of application for amendments:* September 20, 1994

*Brief description of amendments:* The amendments modify the Technical Specifications for auxiliary feedwater to reduce the secondary side steam pressure required for testing the turbine driven auxiliary feedwater pump and to allow 24 hours to perform the test after reaching the minimum test pressure.

*Date of issuance:* April 17, 1995

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment Nos.:* 165 and 146

*Facility Operating License Nos.* DPR-70 and DPR-75. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 9, 1994 (59 FR 55889) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 17, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

**Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey**

*Date of application for amendment:* February 3, 1994, as supplemented September 19, 1994, and November 23, 1994

*Brief description of amendment:* The amendment changes the Technical Specifications to reflect a reduction in Reactor Coolant System flow.

*Date of issuance:* April 17, 1995

*Effective date:* April 17, 1995

*Amendment No.:* 147

*Facility Operating License No.* DPR-75: This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 15, 1995 (60 FR 14028) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 1995.No

significant hazards consideration comments received: No

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

**Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York**

*Date of application for amendment:* March 13, 1995

*Brief description of amendment:* This amendment revises Technical Specification 4.4.2.4.a to replace specific leakage rate testing frequencies for containment isolation valves that require Type C testing for the 1995 refueling outage to be completed prior to exiting Cold Shutdown tentatively scheduled for April 27, 1995.

*Date of issuance:* April 26, 1995

*Effective date:* April 26, 1995

*Amendment No.:* 59

*Facility Operating License No.* DPR-18: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 22, 1995 (60 FR 15167) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

**TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas**

*Date of amendment request:* February 23, 1994 (LAR 94-005, TXX-94034)

*Brief description of amendments:* These amendments changed Technical Specification (TS) 3/4.5.1, ''Emergency Core Cooling Systems, Accumulators, Cold Leg Injection,'' to: 1) allow a one hour allowed outage time following discovery of a closed cold leg injection accumulator discharge isolation valve in Modes 1, 2, or 3; 2) eliminate the redundant requirement to reverify accumulator boron concentration following fill from the refueling water storage tank RWST; 3) remove the accumulator water level and pressure channel analog channel operational test and channel calibration from the TSs; and 4) change the accumulator limits to analysis values rather than indicated values. Also these amendments modified TS 3/4.5.2, ''ECCS Subsystems - Tavg ≤ 350°F'' to reduce the visual inspection frequency following containment entries.

*Date of issuance:* April 27, 1995

*Effective date:* April 27, 1995, to be implemented within 30 days.

*Amendment Nos.:* Unit 1 - Amendment No. 40; Unit 2 - Amendment No. 26

*Facility Operating License Nos.* NPF-87 and NPF-89. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 3, 1994 (59 FR 39597) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 27, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

**TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas**

*Date of amendment request:* August 9, 1994, (LAR 94-013, TXX-94211)

*Brief description of amendments:* These amendments eliminated ''High Negative Neutron Flux Rate'' reactor trip function based on analyses which demonstrate that the protection provided by the reactor trip function is not required. The affected Technical Specifications were: 2.2.1, ''Reactor Trip System Instrumentation Setpoints,'' and 3/4.3.1, ''Reactor Trip System Instrumentation.'' Also affected was Bases Section 2.2.1.

*Date of issuance:* April 17, 1995

*Effective date:* April 17, 1995, to be implemented within 30 days.

*Amendment Nos.:* Unit 1 - Amendment No. 39; Unit 2 - Amendment No. 25

*Facility Operating License Nos.* NPF-87 and NPF-89. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 28, 1994 (59 FR 49438) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 17, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* September 9, 1994, as supplemented on December 22, 1994

*Brief description of amendment:* The amendment revises the Technical Specification (TS) 3/4.8.2.1, 3/4.8.2.2, 3/4.8.3.1, and 3/4.8.3.2. The changes address the 125-volt DC buses and adds provisions for swing battery chargers, and removes provisions for the 4160-volt and 480-volt AC emergency buses.

*Date of issuance:* April 18, 1995

*Effective date:* April 18, 1995

*Amendment No.:* 99

*Facility Operating License No.* NPF-30. Amendment revises the Technical Specification Bases and FSAR.

*Date of initial notice in* **Federal Register:** January 4, 1995 (60 FR 506) The December 22, 1994, letter provided supplemental information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1995. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.**

*Date of application for amendments:* February 14, 1995

*Brief description of amendments:* These amendments modify the Technical Specifications (TS) to revise Section 4.4.D of the TS to permit approved exemptions to the containment integrated leak rate test frequency requirements.

*Date of issuance:* April 18, 1995

*Effective date:* April 18, 1995

*Amendment Nos.:* 196 and 196

*Facility Operating License Nos.* DPR-32 and DPR-37: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 15, 1995 (60 FR 14029) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.**

*Date of application for amendments:* September 6, 1994, as supplemented March 7, 1995

*Brief description of amendments:* These amendments modify the Technical Specifications to revise the

review responsibilities of the Station Nuclear Safety and Operating Committee and the Management Safety Review Committee.

*Date of issuance:* April 21, 1995

*Effective date:* April 21, 1995

*Amendment Nos.:* 197 and 197

*Facility Operating License Nos.* DPR-32 and DPR-37: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 12, 1994 (59 FR 51631) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of application for amendment:* April 1, 1993

*Brief description of amendment:* This amendment revises TS 3.8.1, ''A.C. Sources'' by increasing the minimum required level of diesel generator fuel storage capacity. This change is based on testing and revised calculations that demonstrated that the existing levels of DG fuel storage were inadequate to meet the post-loss of coolant accident fuel consumption requirements for seven days of operation.

*Date of issuance:* April 25, 1995

*Effective date:* April 25, 1995, to be implemented within 30 days of issuance

*Amendment No.:* 136

*Facility Operating License No.* NPF-21: The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 12, 1993 (58 FR 28065) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee NuclearPower Plant, Kewaunee County, Wisconsin**

*Date of application for amendment:* August 24, 1994 as supplemented on January 23, 1995.

*Brief description of amendment:* The amendment revises Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 3.1.b.1 and Figure TS 3.1-4 regarding Low Temperature Overpressure (LTOP) protection for the reactor coolant pressure boundary. The change extends the LTOP requirements through the end of operating cycle 21 or 18.40 effective full power years. The Basis Section has also been modified to reflect these changes.

*Date of issuance:* April 26, 1995

*Effective date:* April 26, 1995

*Amendment No.:* 120

*Facility Operating License No.* DPR-43. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 12, 1994 (59 FR 51632). The January 23, 1995, submittal, provided additional reference material which did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 1995.No significant hazards consideration comments received: None.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of application for amendment:* November 8, 1994, as supplemented on January 9, February 14, March 8, and April 3, 1995.

*Brief description of amendment:* The amendment revises Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 3.1.d, ''Leakage of Reactor Coolant,'' TS 4.2.b, ''Steam Generator Tubes,'' and TS 3.4.a, ''Steam Generators,'' to allow application of a voltage-based repair limit for the steam generator (SG) tube support plate (TSP) intersections experiencing outside diameter stress corrosion cracking (ODSCC). The amendment also reduces the allowed primary-to-secondary operational leakage from any one SG from 500 gallons per day (gpd) to 150 gpd. These changes to the tube repair criteria are applicable for the 1995 to 1996 operating cycle (Cycle 21) only.

*Date of issuance:* April 17, 1995

*Effective date:* April 17, 1995

*Amendment No.:* 118

*Facility Operating License No.* DPR-43. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 7, 1994 (59 FR 63127). The January 9, February 14, and March 8, and April 3, 1995, submittals provided clarifying information which did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 17, 1995. No significant hazards consideration comments received: None.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of application for amendment:* September 7, 1994

*Brief description of amendment:* The amendment revises Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) by adding two new sections, TS Section 3.0 and TS Section 4.0, with associated bases. TS Section 3.0 establishes the general requirements applicable to each of the Limiting Conditions for Operation (LCOs) within Section 3 of the KNPP TS. TS Section 4.0 establishes the general requirements applicable to Surveillance Requirements. The new requirements of TS 4.0.b also affect TS Sections 4.5, 4.6, 4.7, and Tables TS 4.1-2 and 4.1-3.

*Date of issuance:* April 18, 1995

*Effective date:* April 18, 1995

*Amendment No.:* 119

*Facility Operating License No.* DPR-43. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 12, 1994 (59 FR 51632)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

**Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required

by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By June 9, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine

witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson SteamElectric Plant, Unit No. 2, Darlington County, South Carolina**

*Date of application for amendment:* April 13, 1995, as supplemented April 18, 1995.

*Brief description of amendment:* Amendment revises TS Section 4.4.3.f, g, and h to allow the post accident heat removal system surveillance test interval to be changed from a 12-month interval to a refueling outage interval.

*Date of issuance:* April 19, 1995

*Effective date:* April 19, 1995

*Amendment No.:* 163

*Facility Operating License No.* DPR-23. Amendment revises the Technical Specifications.The Commission's final determination of significant hazards consideration and related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1995.

*Local Public Document Room location:* Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Dated at Rockville, Maryland, this 3rd day of May, 1995.

For The Nuclear Regulatory Commission

**Elinor G. Adensam,**

*Acting Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation*

[Doc. 95–11367 Filed 5–9–95; 8:45 am]

BILLING CODE 7590–01–F

---

**[Docket No. 50–160–Ren; ASLBP No. 95–704–01–Ren]**

## Georgia Institute of Technology, Atlanta, GA, Georgia Tech Research Reactor, (Renewal of Facility License No. R–97); Notice of Hearing

May 4, 1995.

On September 26, 1994, the Nuclear Regulatory Commission published in the **Federal Register** a notice of opportunity for hearing with respect to the proposed renewal of the facility operating license for the Georgia Tech Research Reactor, located on the campus of the Georgia Institute of Technology in Atlanta, Georgia (59 FR 49088. One request for a hearing and petition for leave to intervene, filed by Georgians Against Nuclear Energy (GANE), was received. On November 18, 1994, an Atomic Safety and Licensing Board was established to rule upon this request and to preside over the proceeding in the event that a hearing were ordered.

After holding a prehearing conference in Atlanta, Georgia, the Atomic Safety and Licensing Board issued a Prehearing Conference Order (LBP–95–6) on April 26, 1995, granting GANE's request for a hearing and petition for leave to intervene.

Please take notice that a hearing will be conducted it this proceeding. The Atomic Safety and Licensing Board designated to preside over the proceeding consists of Dr. Jerry R. Kline, Dr. Peter S. Lam, and Charles Bechhoefer, who will serve as Chairman of the Board.

During the course of the proceeding, the Board may hold one or more prehearing conferences pursuant to 10 CFR 2.752 and, if necessary, an evidentiary hearing. The public is invited to attend all these sessions, except to the extent that information protected by 10 CFR 2.790 (relevant to one of the contentions accepted by the Board) may be discussed.

Supplementing the opportunity afforded at the first prehearing conference, during some or all of these sessions, and in accordance with 10 CFR 2.715(a), any person not a party to the proceeding will be permitted to make a limited appearance statement, either in writing or (depending on time availability) orally, setting forth his or her position on the issues. These statements do not constitute testimony or evidence in these proceedings but may assist the Board and/or parties in the definition of issues being considered. To the extent that oral statements are permitted, the number of persons making such statements and the time allotted for each may be limited depending upon the time available at various sessions. Written statements may be submitted at any time. Written statements, and requests to make oral limited appearance statements, should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch. A copy of such statement or request should be served on the Chairman of this Atomic Safety and Licensing Board, T3 F23, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, 2120 L St. N.W., Washington, D.C. 20555.

Rockville, MD, May 4, 1995.

For the Atomic Safety and Licensing Board.

**Charles Bechhoefer,**

*Chairman, Administrative Judge.*

[FR Doc. 95–11532 Filed 5–9–95; 8:45 am]

BILLING CODE 7590–01–M

---

**[Docket Nos. 70–7001; 70–7002]**

## United States Enrichment Corporation: Paducah Gaseous Diffusion Plant; Portsmouth Gaseous Diffusion Plant; Notice of Cancellation of Comment Period and Cancellation of Public Meetings Due to Inadequate Application for Certification

The U.S. Nuclear Regulatory Commission (NRC) received by letter dated April 18, 1995, an application from the United States Enrichment Corporation (USEC) for the initial certification of the gaseous diffusion plants (GDPs) located near Paducah, Kentucky and Piketon, Ohio. Notice of receipt of this application along with notice of comment period and public meetings was published in The **Federal Register** on April 28, 1995 (60 FR 21011). However, NRC's preliminary

review of the application indicates that the application does not contain enough information for NRC to determine compliance with NRC regulation 10 CFR part 76. Therefore, USEC has been notified that it must submit a new application. Note that this determination does not constitute a finding that the GDP operations are unsafe or in noncompliance.

The public comment period from April 28, 1995 to June 15, 1995, and the public meetings scheduled for May 23 and May 24, 1995, have been cancelled. They will be rescheduled at a later date when USEC submits the new application.

Copies of the application for certification (except for classified and proprietary portions withheld in accordance with 10 CFR 2.790, ''Availability of Public Records''), dated April 18, 1995, will continue to be available for public inspection and copying at the Commission's Public Document Room (PDR) and Local Public Document Rooms (LPDR) established for the gaseous diffusion plants. Upon receipt, USEC's new application will also be made available at the PDR and respective LPDR's. Copies of related correspondence and staff evaluations (except for portions withheld in accordance with 10 CFR 2.790) will continue to be made available at these locations.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rocio Castaneira, telephone (301) 415–8103; Mr. Carl B. Sawyer, telephone (301) 415–8174; or Ms. Merri Horn, telephone (301) 415–8126; Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville Maryland, this 4th day of May 1995.

For the Nuclear Regulatory Commission.

**John W.N. Hickey,**

*Chief, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards.''*

[FR Doc. 95–11483 Filed 5–9–95; 8:45 am]

BILLING CODE 7590–01–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:* Annual Earnings Monitoring
(2) *Form(s) submitted:* RRB Form G–19 (I), (II), (III), (IV), (V)
(3) *OMB Number:* 3220–0073
(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:* 2,700
(8) *Total annual responses:* 2,700
(9) *Total annual reporting hours:* 450
(10) *Collection description:* The report obtains information about a survivor annuitant's employment and earnings. Under the RRA, an annuity can be reduced or not paid, depending on the amount of earnings and type of work performed.

*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. 95–11458 Filed 5–9–95; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–35669; File No. SR–BSE–95–04]**

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Permanent Approval of BEACON Subscriber Credits

May 3, 1995.

On February 13, 1995, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'') or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking permanent approval of the BEACON subscriber credits. On March 13, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change,[3] and on March 23, 1995, the Exchange submitted Amendment No. 2 to the proposed rule change.[4]

The proposed rule change, including Amendment Nos. 1 and 2, was published for comment in Securities Exchange Act Release No. 35529 (Mar. 23, 1995), 60 FR 16216 (Mar. 29, 1995). No comments were received on the proposal.[5]

The Exchange seeks to obtain permanent approval of a portion of its fee schedule that provides credits of $.25 per trade to all non-self-directed, electronically routed, Exchange executed trades. The aggregate credit per firm is limited to the total monthly layoff transaction fees charged to that firm.[6] For purposes of the per trade credit, ''non-self-directed'' means entered by a BEACON subscriber in a stock in which the routing firm has no affiliation with or financial interest in the specialist operation registered in such stock.

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

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] See letter from Karen Aluise, Assistant Vice President, BSE, to Jennifer Choi, Attorney, Division of Market Regulation, SEC, dated March 9, 1995. Amendment No. 1 corrected Exhibit 2 by referencing the BEACON subscriber Credits as the fee being amended and deleting unnecessary language.

[4] See letter from Karen Aluise, Assistant Vice President, BSE, to Jennifer Choi, Attorney, Division of Market Regulation, SEC, dated March 22, 1995. Amendment No. 2 corrected Exhibit 2 by moving the phrase ''all trades accumulate for volume discounts'' below the schedule of volume discounts.

[5] After the Commission published the proposed rule change for comment, the Exchange, pursuant to Section 19(b)(3)(A) of the Act, filed a rule change further amending the language of the portion of its fee schedule entitled ''Transaction Fees'' that relate to trade recording and comparison charges, which is the subject of the current filing. See Securities Exchange Act Release No. 35630 (Apr. 19, 1995) 60 FR 20541 (Apr. 26, 1995) (noticing the filing and immediate effectiveness of the proposed rule change). Although the changes made by the filing did not affect the substance of this proposed rule change, they did alter the text of the proposed rule change as attached in Exhibit 2 of the BSE's filing. See File No. SR–BSE–95–04.

[6] The layoff transaction fees refer to the trade recording and comparison charges incurred by a firm as a result of executing trades through layoff terminals on the floor of the Exchange. These terminals are firm proprietary systems that are integrated with the order routing system of the New York Stock Exchange (''NYSE'') and route orders directly to the NYSE. Telephone conversation with Karen Aluise and Ken Meeden, BSE, and Glen Barrentine and Jennifer S. Choi, SEC, on May 3, 1995.

requirements of Section 6(b).[7] The Commission believes that the proposed rule change is consistent with the Section 6(b)(4) requirements that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuer and other persons using its facilities. Moreover, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission also believes the proposal is consistent with the Section 6(b)(8) requirements that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission believes that the proposal, which was designed to encourage routing order flow to the Exchange, is consistent with the requirements of the Act because the proposed rule change is adequately circumscribed by the limitation on the aggregate amount of credit that could be received and does not make executions off the Exchange prohibitively expensive. The Commission, however, will continue to review carefully all proposed rule changes, especially those governing fees and credits on fees, for consistency with, among other things, the requirements of Sections 6(b)(4), 6(b)(5), and 6(b)(8).

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–BSE–95–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11447 Filed 5–9–95; 8:45 am]

**BILLING CODE 8010–01–M**

---

**[Release No. 34–35666; File No. SR–CBOE–95–21]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Parents of Member Organizations

May 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1995, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to rescind Rule 3.7, which requires the Exchange's Board to approve each country under whose laws non-U.S. parents of member organizations are organized. The CBOE also proposes to move from Rule 3.7 to Rule 3.5(a) the requirement that parents of member organizations must furnish certain information to the Exchange upon request.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to eliminate the requirement that the Exchange's Board of Directors must approve each country under whose laws non-U.S. parents of member organizations are organized. The Exchange believes this requirement is not necessary for the effective regulation of its members and their parent organizations, if any. To the contrary, elimination of this requirement will facilitate the Exchange's review of membership applications submitted by member organizations that have non-U.S. parents, as well as its review of transactions that would result in the transfer of control of an existing member organization to a foreign parent.

The Exchange has never adopted any standards to govern the Board's approval of individual countries for purposes of Rule 3.7, and would find it problematic to do so. However, since parents of member organizations are ''associated persons'' for purposes of Exchange Rules, as that term is defined in Rule 1.1(qq), the Exchange has and will continue to have adequate regulatory jurisdiction over U.S. and foreign parents of member organizations. for example, Rule 3.5 subjects associated persons to the Constitution and Rules of the Exchange and the Clearing Corporation, and requires associated persons to provide information to the Exchange with respect to their relationship and dealings with the member and to permit the Exchange to examine their relevant books and records. In addition, as part of this filing, CBOE proposes to move to Rule 3.5 the requirement currently contained in Rule 3.7 obligating persons who control member organizations to furnish to the Exchange any information reasonably related to their securities business that the Exchange may request. The Exchange's authority over parents of member organizations is further enlarged by Rule 17.1, which subjects persons associated with members to the disciplinary jurisdiction of the Exchange.

2. Statutory Basis

In light of this broad grant of regulatory authority over persons who control member organizations as described above, and the fact that members themselves are subject to comprehensive regulation under the rules of the Exchange and both federal and state securities laws, the Exchange has concluded that the requirement is consistent with Section 6(b) of the Securities Exchange Act of 1934 in general, and furthers the objectives of Section 6(b)(2) in particular, by eliminating restrictions on who may be associated with a member of the Exchange without diminishing the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposed rule change will impose no burden on competition.

---

[7] 15 U.S.C. 78f(b) (1988 & Supp. v 1993).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1994).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–95–21 and should be submitted by May 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11443 Filed 5–9–95; 8:45 am]

**BILLING CODE 8010–01–M**

[1] 17 CFR 200.30–3(a)(12) (1994).

**[Release No. 34–35668; File No. SR–CSE–95–05]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc., Relating to National Securities Trading System Fees

May 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1995, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby amends Rule 11.10 regarding fees imposed by the Exchange. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Rule 11.10 NATIONAL SECURITIES TRADING SYSTEM FEES

G. PROPRIETARY (principal) TRANSACTIONS

1. Designated Dealers will be charged $0.0075 per share ($0.75/100 shares) for principal transactions unless acting as Dealer of the Day, a Preferencing Dealer or a Contributing Dealer *except, ITS Transactions will be billed $0.0050 per share on outbound trades and $0.0000 per share on inbound trades subject to paragraph 5 below.* (Billable shares shall not exceed 650,000 shares times the number of trading days in any given month.)

2. Designated Dealers acting as ''Dealer of the Day'' will be charged $0.005 per share ($0.50/100 shares) for principal transactions.

3. Contributing Dealers will be charged $0.02 per share ($2.00/100 shares) for principal transactions.

4. Members executing principal transactions in securities for which they are not registered as a Designated or Contributing Dealer will be charged $0.02 per share ($2.00/100 shares).

5. Designated Dealers (DD) shall have the following minimum average per share charge applied to their aggregate monthly DD transactions using the DD's average volume per trading day:

| Designated dealer's average share volume per day | Per share minimum charge | |
|---|---|---|
| [1 to 1,350,000] ..... | [$0.0046] | |
| [1,350,000] *1* to 2,000,000 ..... | [$0.0040] | $0.0038 |
| 2,000,001 and higher ..... | $0.0030 | |

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange has determined to adjust its inter-market transaction fees as they relate to Designated Dealers [1] to reflect costs for similar trading on other markets. The fee changes impact Designated Dealer trades (other than those transacted as Dealer of the Day,[2] Preferencing Dealer [3] or Contributing Dealer [4] and place the Exchange's fees in

[1] A Designated Dealer is a proprietary member who maintains a minimum net capital of at least the greater of $100,000 or the amount required under Rule 15c3–1 of the Act, and who has been approved by the Exchange's Securities Committee to perform market functions by entering bids and offers for securities designated by the Securities Committee to be traded in the CSE's National Securities Trading System (''designated issue'') into that System. See CSE Rule 11.9(a)(3).

[2] The CSE's Rules provide that if there are two or more Designated Dealers in a designated issue, unless the Exchange's Securities Committee has approved one member as a primary Designated Dealer, the guarantee obligations under the Rules rotate among such Designated Dealers on a daily basis. See CSE Rule 11.9(c)(iv).

[3] A Preferencing Dealer is an Approved Dealer who enters principal bids and offers into the National Securities Trading System for execution against public agency orders that such Approved Dealer is representing as agent pursuant to CSE Rule 11.9(u). An Approved Dealer is a Designated Dealer, a Contributing Dealer, or a specialist or market maker registered as such with another exchange with respect to any designated issue. See CSE Rule 11.9(a)(2).

[4] A Contributing Dealer is a proprietary member who maintains a minimum net capital of at least the greater of $50,000 or the amount required under Rule 15c3–1 of the Act, is registered with the Exchange with respect to one or more designated

Continued

line with those of other markets. The fees are effective on settlement date May 1, 1995.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in that it is designed to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The fee change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the fee change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. 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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–95–05 and should be submitted by May 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11446 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

issues, and provides to all users (members of the Exchange or Approved Dealers) through the National Securities Trading System, during Exchange trading hours, regular bids and offers for round lots of designated issues for which he is registered. See CSE Rule 11.9(a)(4).

---

**[Release No. 35–35656; File No. SR–MSTC–95–06]**

## Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Expansion of an Interface With the Depository Trust Company's Interactive Institutional Delivery System

April 28, 1995.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 6, 1995, the Midwest Securities Trust Company (''MSTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MSTC–95–06) as described in Items I and II below, which items have been prepared primarily by MSTC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

MSTC proposes to expand its interface with The Depository Trust Company's (''DTC'') Interactive Institutional Delivery (''IID'') system to include an interactive inquiry and affirmation capability and to facilitate access to DTC's standing instruction database (''SID'').

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, MSTC 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.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

MSTC proposes to make certain changes to its National Institutional Delivery System (''NIDS'') to comply with the accelerated settlement cycle mandated by Commission Rule 15c6–1[3] and to provide uniformity in depository processing for institutional trade recording and settlement. To accomplish those goals, MSTC is expanding its interface with DTC's IID system to include an interactive inquiry and affirmation capability and to facilitate access to DTC's SID. As a result, MSTC's NIDS system also will be known as the Interactive Institutional Delivery System.

Currently, MSTC provides its own screens and functions; however, through the new on-line interface, MSTC will provide its participants with DTC's functions and screens. For example, the current MSTC National Institutional Delivery Affirmation (''NIDA'') function for affirmation input will be replaced by the IID system's affirmation function menu (''IDAA''). The IDAA function is currently part of DTC's IID system and MSTC intends to use this function to replace the current end of day transmission of data accumulated via the NIDA screen. The IDAA function will provide MSTC participants with on-line access to the following trade affirmation processing options: (1) Affirm all trades, (2) affirm all trades with exemptions, (3) affirm individual trade, and (4) individual exceptions.

DTC's Institutional Delivery Global Inquiry Menu, (''IDGI'') function also will be made available to MSTC participants through MSTC's on-line interface with DTC's IID system. The IDGI function will provide on-line inquiry capability on the following data, most of which was previously available in hard copy reports: (1) Single trade

[1] 15 U.S.C. 73s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by MSTC.

[3] Securities and Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1). Rule 15c6–1 will be effective June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137 (changing the effective date of Rule 15c6–1).

detail, (2) change of security eligibility, (3) settlement date inquiry, (4) trade data inquiry, and (5) batch trade summary. As result of MSTC use of the IDGI and IDAA functions, MSTC will discontinue the following hard-copy reports: (10 T+3 Unaffirmed Report, (2) T+4 Unaffirmed Report, and (3) T+4 Cumulative Eligible Trade Report. The following reports and contracts will be produced three times daily instead of once a day: (1) Broker Trade Error Report, (2) Confirmed trades, (3) Affirmed Trades, and (4) Unaffirmed Trades. A change of Eligibility Report [4] will be produced once at the end of the day.

Multiple intraday transmissions of trade data submitted via the IIDT screen will replace the current practice of once at the end of the day transmission of data submitted via the NIDT screen.[5] All on-line IID input and inquiry screens will be available until 8:00 p.m. central time ''CT''). Also, the current cut-off times of 5:00 p.m. CT for affirmation input via file transfer, 8:00 p.m. CT for trade input via terminal, and 10:30 p.m. CT for trade input via file transfer to receive affirmation/confirmation output at 7:00 a.m. CT the next day will be changed to the following input/output schedule:

| Trade input cut-off | Confirm output | Affirm input cut-off (FTS) |
|---|---|---|
| 10:30 a.m. on Trade date (T) | 12:00 noon on Trade date (T) | 1:00 p.m. on Trade date (T). |
| 12:30 p.m. on Trade date (T) | 2:00 p.m. on Trade date (T) | 3:00 p.m. on Trade date (T). |
| 3:30 a.m. on Trade date plus one (T+1) | 5:00 a.m. on Trade date plus one (T+1) | 6:00 a.m. on Trade date plus one (T+1). |

Upon the effective date of Rule 15c6–1 requiring settlement of most trades on trade data plus three (''T+3''), the affirmation cut-off time for automatic settlement of regular way trades will be accelerated from the close of business on T+3 to the close of business on T+1 will a correction affirmation period until 12:00 noon eastern time (''ET'') on T+2. For all trades subject to a nonstandard settlement cycle, the stated cut-off time will be settlement data minus two (''S–2'') with corrections until noon ET on S–1. Finally, Quality Control Reports will be adjusted to reflect the shortened settlement cycle and the revised cut-off times.

Under the proposal, when an affirmed confirmation is received by the established cut-off time, the new IID system automatically will create the book entry movement to settle the trade. Based on the revised input/output schedule, the IID system now has the potential to produce settlement transactions three times daily on the date of affirmation.

Finally, DTC's Standing Instruction Database (''SID'') also will be available to MSTC participants through MSTC's on-line interface with DTC's IID system. The SID function will allow MSTC participants to utilize DTC's database to maintain customer account and settlement information in a central repository. This is a new function not previously available to MSTC participants using NIDS and will be optional for MSTC participants. SID will only populate certain fields on the trade confirmation and will enable automatic affirmation through matching.[6]

MSTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the rule proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MSTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments have been solicited or received. MSTC will notify the Commission of any written comments received by MSTC.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)F [7] of the Act requires the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission believes that MSTC's proposal to expand its interface with DTC's IID System should help cooperation and coordination because the proposal will enable MSTC participants to utilize DTC's IID system's interactive inquiry and affirmation capability and to access DTC's SID. The proposal also will provide uniformity in depository processing of institutional trade recording and settlement and should help MSTC participants to settle institutional trades in a T+3 settlement cycle.

MSTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because timely settlement of institutional trades is critical to the successful conversion to T+3, and accelerated approval will allow MSTC

[4] Eligibility refers to depository eligibility of securities.

[5] MSTC's current trade input screen (''NIDT'') will be replaced with MSTC's revised IID Trade Input screen (''IIDT''). Filed changes have been made to both terminal and file transfer trade input layouts to achieve compatibility with the DTC IID system. Changes to existing fields on the trade input screen have been made to allow for additional edits and expanded fields. The following fields have been deleted: (1) ISIN—international security identification number, (2) CD—international check digit, and (3) CORSP IND—Correspondent. The following fields have been added: (1) SIDIND—Bypass SID indicated, (2) SET LOC—Settlement Location, (3) ORG CONF—Orginal Broker Confirm Number, and (4) FED Factor—Amortized/Accredited Factor. The following new fields will be defaulted and will be included on the file transmission submitted to DTC for process but will not be populated on the revised IIDT trade input screen: (1) Split Currency Indicator—Default to No., (2) Quality Control Exempt—Default to be (*i.e.*, transaction will be included in reporting of member firm confirmation and affirmation rates), (3) Security Numbering System—Default to US=CUSIP, (4) Alternate Currently Conversion Rate—Default to zero, (5) Alternate Currency ISO Code—Default to CUR CD value (*i.e.*, field currently provides default to zero value but will permit default to alternative currently values) and (6) Alternate Currency—Default to zero net amount.

[6] As described in the Commission order approving DTC's overall concept of an enhanced IID system, the matching option is intended to serve as an alternative to the current confirmation and affirmation processing in the IID system. The matching feature will match trade data received from the broker-dealer with institution instructions received from the institution. The results of the matching will be reported through the distribution of output reports to the broker-dealer, the agent, and the institution. Securities Exchange Act Release No. 33466 (January 12, 1994), 59 FR 3139 [File No. SR–DTC–93–07]. At present, however, matching is not available through the enhanced IID system, and DTC has not yet filed a proposed rule change with the Commission seeking approval of the matching option.

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

participants to become familiar with and utilize the new functions available through MSTC's expanded interface with DTC's IID system prior to the implementation of T+3 settlement.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to the file number SR–MSTC–95–06 and should be submitted by May 31, 1995.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MSTC–95–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11442 Filed 5–9–95; 8:45 am]

**BILLING CODE 8010–01–M**

[8] 17 CFR 200.30–3(a)(12) (1994).

---

**[Release No. 34–35673; File No. SR–PHLX–95–24]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Modification of the Dress Code

May 4, 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 May 1, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and 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.[1] 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

PHLX Regulation 6, ''Dress,'' which was adopted pursuant to Exchange Rule 60, ''Assessments for Breach of Regulations,'' is a regulation of order and decorumn applicable to all three trading floors on the Exchange (equity, foreign currency option (''FCO''), and equity option/index option). The PHLX proposes to amend PHLX Regulation 6 to update the Exchange's dress code and allow the appropriate floor standing committee[2] to waive the Exchange's dress code for a specific period of time. Specifically, the PHLX proposes to amend PHLX Regulation 6 to: (1) Prohibit members from wearing clothing with words or pictures that detract from a professional atmosphere; (2) allow the appropriate floor committee to determine whether males must wear dress shirts with collars and neckties; (3) prohibit members from wearing golf, polo, or T-shirts, shorts, sweats, sandals, and any shoes that are dirty, frayed, faded, or torn; and (4) remove the provision prohibiting members from wearing denim garments, other than blue jeans.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

[1] On May 4, 1995, the PHLX clarified its proposal by eliminating references to tie-dyed clothing and sneakers, which, under the proposal, are no longer specifically prohibited. The clarification makes the PHLX's description of its proposal consistent with the text of the proposed rule change. See Letter from Edith Hallahan, Special Counsel, Regulatory Services, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division of Market Regulation, Commission, dated May 4, 1995.

[2] Under Exchange By-Law 10–15, ''Floor Procedure Committee,'' the Exchange's Floor Procedures Committee supervises the dealings of PHLX members on the equity trading floor. Under Exchange By-Law 10–16, ''FCO Committee,'' the PHLX's FCO Committee supervises the dealings of Exchange members on the FCO trading floor. Under Exchange By-Law 10–18, ''Options Committee,'' the Exchange's Options Committee supervises PHLX members on the equity and index option trading floor.

### 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 amend PHLX Regulation 6 to update the dress code to eliminate outdated terms and reflect changes in acceptable types of dress. For example, under the proposal, sneakers and denim garments, other than blue jeans, are no longer expressly prohibited. However, the proposal expressly prohibits golf, polo, and T-shirts, shorts, sweats, and sandals, as well as words or pictures on clothing that draw excessive attention or detract from a professional atmosphere. Regulation 6 continues to prohibit clothing that is dirty, frayed, torn, or attracts excessive attention.

Under the proposal, males will no longer necessarily be required to wear ties; the applicable floor standing committee will determine whether ties are required on that particular trading floor. With respect to acceptable footwear, although sandals are still prohibited, sneakers (running/gym shoes) are permitted. The Exchange believes that the proposed changes continue to establish a reasonable dress code subject to objective enforcement.

The PHLX states that the proposed amendments are also designed to incorporate a waiver provision into Regulation 6. Specifically, the chairperson of the standing floor committee (the Options Committee, the Floor Procedure Committee, or the FCO Committee) or his designee may waive any part of the dress code for a specified period of time. The purpose of this change is to permit flexibility in the dress code when deemed necessary by the floor committee chairperson. For example, severe weather conditions may warrant relaxing the dress code until the conditions abate. The Exchange states that it will provide prior notice to the trading floor of any such waiver or

reinstatement of the dress code. The PHLX notes that this waiver provision is similar to a provision enacted recently into PHLX Regulation 2, ''Food, Liquids, and Beverages,'' regarding the ability of the floor committee chairperson to waive the general prohibition against food and beverages on the Exchange's trading floors.[3]

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 by maintaining a decorous atmosphere on the Exchange's trading floor.

*(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; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for 30 days after May 1, 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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11507 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

[3] See Securities Exchange Act Release No. 34249 (June 23, 1994), 59 FR 33565 (June 29, 1994) (order approving File No. SR–PHLX–94–13).

[4] 17 CFR 200.30–3(a)(12) (1994).

---

**[Release No. 34–35677; International Series Release No. 808; File No. SR–Phlx–95–21]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Trading of Customized Foreign Currency Options on the Spanish Peseta

May 4, 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 5, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to trade customized foreign currency options (''FCOs'') on the Spanish peseta. The text of the proposed rule change is available at the Office of the Secretary, the 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 Phlx included statements concerning the purpose of and basis for the 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 Phlx 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 the Statutory Basis for, the Proposed Rule Change*

Currently the Phlx offers listed FCOs on the British pound, French franc, Swiss franc, Japanese yen, Canadian dollar, Australian dollar, German mark and European Currency Unit. Since November 1994, the Exchange has offered the ability to trade ''customized'' FCOs on all of these currencies.[1] The Exchange now proposes to add the Spanish peseta to the list of approved currencies on which customized FCO's may be listed and traded pursuant to Exchange Rule 1069. Thus, there would be no continuously quoted series of Spanish peseta contracts. Rule 1069(a)(1) provides that customized FCOs may be traded on any approved underlying foreign currency pursuant to Exchange Rule 1009, so the Exchange proposes to amend Rule 1009 to add the Spanish peseta to the list of approved underlying foreign currencies.

The Exchange represents that the Spanish peseta accounts for a significant portion of the inter-bank foreign exchange market turnover. According to the Bank for International Settlements (''BIS''), the Spanish peseta represents the twelfth most active inter-bank currency traded against the U.S. dollar, accounting for 1.7% or more of inter-

[1] More specifically, customized FCOs provide investors with the ability, within specified limits, to trade FCOs with customized strike prices, cross-rate FCOs on any two approved currencies, and FCOs where the U.S. dollar is the underlying currency. In addition, FCO participants may express quotes for customized FCOs as a percentage of the underlying currency, in addition to quoting in terms of the base currency per unit of the underlying currency. *See* Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1995) (''Exchange Act Release No. 34925).

bank trading.[2] Moreover, over 91% of the activity in the Spanish peseta is against either the U.S. dollar (64%) or the German mark (27%).[3] The Spanish peseta is not pegged to a rate of exchange *vis a vis* the U.S. dollar. Further, the United States has substantial trade relations with Spain.

The Exchange represents that the initial and maintenance customer margin levels for the Spanish peseta will initially be set at 4%, which would cover 96.54% of all seven day price movements over the last two years.[4] Pursuant to Rule 1069(a)(1)(B), users would be able to trade customized FCO's between the Spanish peseta and any other approved foreign currency. Currency pairs between the Spanish peseta and the Australian dollar and between the Spanish peseta and the Canadian dollar have exhibited a correlation of less than .25 over the preceding two year period and will be placed in Tier II under Exchange Rule 722, thereby requiring 6% margin.[5] All other currency pairs involving the peseta would be placed in Tier I (4% margin required) because their correlations have exceeded .25.[6]

The contract size for the Spanish peseta would be 5,000,000 pesetas.[7] The premiums will be quoted in thousandths of a cent per unit for U.S. dollar/Spanish peseta contracts and the minimum premium would be $0. (0000) 01 per unit which equals $5.00. Exchange Rule 1069(j)(1)(A) will be added to provide that, because the Exchange does to have continuously quoted FCOs on the Spanish peseta, there will be no quote spread parameters applicable to customized FCOs on the Spanish peseta.[8]

Consistent with the Phlx's other approved foreign currencies, Exchange Rule 1033 will be amended to specify the bid and offer rules for customized FCOs based on the Spanish peseta. Similarly, Rule 1034 will be amended to provide that the Exchange will determine the minimum fractional change applicable to Spanish peseta customized FCOs.[9]

The Exchange believes that the foregoing rule change proposal is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information, and facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by offering investors the ability to trade options on a major international currency in an auction market environment with all of the attendant protections as an alternative to trading it in the over-the-counter market.

*(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 solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–21 and should be submitted by May 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11508 Filed 5–9–95; 8:45 am]

**BILLING CODE 8010–01–M**

---

**[Release No. 34–35672; File No. SR–NYSE–95–16]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Options Market Maker Exemption From the NASD Short Sale Bid Test for Certain Merger and Acquisition Securities

May 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 21, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to

[2] *See* BIS Central Bank Survey of Foreign Exchange Market Activity in April 1992 (March 1993).

[3] *Id.*

[4] The Commission notes that the margin level review currently applicable to customized FCOs on the Exchange's existing approved foreign currencies will also apply to customized FCOs involving the Spanish peseta. See Exchange Act Release No. 34925, *Supra* note 1.

[5] *Id.*

[6] *Id.*

[7] Based on an exchange rate of 126.6 Spanish pesetas/U.S. dollars on April 5, 1995, as published in the Wall Street Journal, this would correspond to an opening position for a Spanish peseta customized FCO transaction (*i.e.*, 200 contracts) valued at approximately $7,900,000.

[8] Pursuant to Exchange Rule 1069(j)(1), quote spread parameters for customized strike FCOs on approved foreign currencies are twice those provided in Rule 1014(c). Because the Phlx does not list regular FCOs on the Spanish peseta (and will not be able to list regular FCOs on the peseta pursuant to this proposal), no quote spread parameters for the peseta are specified in Rule 1014(c).

[9] Specifically, the Exchange is proposing a minimum fractional change of $0. (0000) 01 for Spanish peseta customized FCO's. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on May 4, 1995. The Commission notes that the Exchange may be required to submit a rule filing pursuant to Section 19(b) of the Act prior to altering this minimum fractional change level.

[10] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

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 NYSE proposes to amend its Rule 759A (Reporting Requirements Applicable to Short Sales in NASDAQ NMS Securities [2]). Rule 759A prohibits an Exchange options specialist or Competitive Options Trader (''COT'') from relying on the options market making exemption from the short sale bid test of the Rules of Fair Practice of the NASD unless the transaction is an ''exempt hedge transaction.'' The proposed rule change would expand the definition of ''exempt hedge transaction'' to include certain short sales of a company that is involved in a publicly-announced merger or acquisition (''M&A'').

**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*

NYSE Rule 759A prohibits each exchange options specialist and COT from relying on the options market maker exemption of the NASD Rules of Fair Practice to effect short sales in Nasdaq NM securities at or below the best bid when the displayed bid is below the preceding best bid in, unless the short sale is an ''exempt hedge transaction.'' The proposal would expand the definition of ''exempt hedge transaction'' to include certain short sales in the stock of a company that is a party (or a prospective party) to an M&A with the issuer of a Nasdaq NM security that underlies an Exchange-listed option. Specifically, with respect to an Exchange options specialist, the exemption would apply to short sales of a company that is a party to an M&A with a company whose Nasdaq NM security underlies a specialty stock option; with respect to a COT, the exemption would apply to short sales of a company that is a party to an M&A with a company whose Nasdaq NM security underlies an Exchange-listed stock option.

For the exemption to apply, the options specialist or COT must initiate the short sale in order to effect a *bona fide* hedge of an existing or prospective position in an Exchange-listed stock option. A ''prospective position'' refers to a position that might be created as the result of specialist or COT has initiated prior to the hedge transaction.

The proposed rule change seeks to address the *bona fide* hedging needs of an options specialist or COT where a company enters into an M&A with a company whose Nasdaq NM security underlies an Exchange-listed option. Under those circumstances, the options specialist or COT may have no feasible alternative to hedge an options position on the Nasdaq NM security, given the risk arbitrage relationship that is likely to exist between the stock underlying the option and the stock of the other company involved in the merger or acquisition.

The Exchange believes that the proposed rule change is consistent with Section 6(b) under that Act in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposal seems to enhance the ability of options specialists and COTs to perform their market-making functions, thereby contributing to the depth and liquidity of the options market.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE believes that the proposed rule change will not impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–95–16 and should be submitted by May 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11509 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

---

**[Release No. 34–35671; File No. SR–PHLX–94–61]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Floor Procedure Advice F–8, Failure to Comply With an Exchange Inquiry

May 4, 1995.

On November 21, 1994, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission

[2] Hereinafter referred to as Nasdaq National Market (''NM'') securities.

[3] 17 CFR 200.30–3(a)(12) (1994).

(''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Floor Procedure Advice (''Advice'') F–8, ''Failure to Comply with an Exchange Inquiry,'' to require PHLX members, member organizations, and associated persons to comply promptly with any request for information made by the Exchange in connection with any regulatory inquiry or examination relating to the Exchange's regulatory obligations. Advice F–8, as proposed, will apply to activities concerning equities,[3] equity options, index options, and foreign currency options (''FCOs'').[4]

The proposed rule change was published for comment in the **Federal Register** on February 7, 1995.[5] No comments were received on the proposal.

Currently, Advice F–8 requires Exchange members,[6] member organizations, and associated persons, to comply promptly with any request for information made by the Exchange's Market Surveillance Department in connection with any investigation within the Exchange's disciplinary jurisdiction involving activities on the equity and option (including equity options, stock index options, and FCOs) trading floors. The PHLX proposes to amend Advice F–8 to: (1) Now also apply to activities on the equity trading floor, and (2) extend the requirements of Advice F–8 to include PHLX Examinations Department requests, as well as any requests made by the Exchange in connection with any other regulatory inquiry, investigation, or examination relating to the Exchange's regulatory obligations.

The PHLX notes that the Advice, which is administered under the Exchange's minor rule violation enforcement and reporting plan (''minor rule plan''),[7] was adopted in order to expedite the Exchange's investigation process by enabling the Exchange to summarily reprimand failures to respond to such requests for information.[8]

Advice F–8 will continue to contain a prompt compliance requirement relating to Exchange requests for information pursuant to the advice. Under the proposal, information requested by the Exchange's Examinations Department must be received within two business days from the date of the original request in order to satisfy the prompt compliance requirement of Advice F–8.[9] For other Exchange requests made pursuant to Advice F–8, information must be received within 10 business days from the date of the original request in order to satisfy the prompt compliance requirement.

Finally, the PHLX proposes to amend Advice F–8 to reduce the fine for a first violation of the Advice from $500 to $200, and to provide that each additional request for information not furnished within the allotted time period may be considered as a separate occurrence for purposes of the Advice's fine schedule.[10]

According to the PHLX, the modification of the fine schedule is designed to deter delays in compliance with Exchange requests for information by counting each repeat request as a separate occurrence. The proposal to reduce the fine for a first occurrence from $500 to $200 is designed to reflect the potential for increased application of the fines.

The PHLX believes that extending the requirements of Advice F–8 to include Examinations Department and other regulatory requests should enhance the Exchange's ability to meet its regulatory obligations expeditiously. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6 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, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirement of Section 6(b)(5)[11] that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. In addition, the Commission finds that the proposal is consistent with the requirement of Section 6(b)(1) of the Act that an exchange have the capacity to enforce compliance by its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

The Commission believes, as it has stated in the past,[12] that in order to effect its supervisory and compliance role over members and members organizations, it is necessary for an exchange to have the ability to set timetables for the receipt of information, and the disciplinary authority to compel members to comply with such requests. By requiring Exchange members to comply promptly with Exchange requests for information in connection with any regulatory inquiry, investigation, or examination, the proposal protects investors and the public interest by facilitating the prompt resolution of Exchange investigations, examinations, and disciplinary proceedings. This, in turn, should enhance the quality, consistency, and fairness of the important Exchange oversight functions and enable the PHLX to better enforce compliance by its members with the Exchange's rules and the federal securities laws.

The Commission believes that it is reasonable for the Exchange to apply the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19v–4 (1994).

[3] On March 15, 1995, the PHLX amended its proposal to apply Advice F–8 to equities as well as options. See Letter from Edith Hallahan, Special Counsel, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision, Division, Commission, dated March 14, 1995. (''Amendment No. 1''). Under Amendment No. 1, Equity Advice EM–1 will be renumbered as F–8.

[4] See Letter from Gerald D. O'Connell, First Vice President Market Regulation and Trading Operations, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated January 30, 1995 (''January 30 Letter'').

[5] See Securities Exchange Act Release No. 35305 (January 31, 1995), 60 FR 7252 (February 7, 1995).

[6] Advice F–8 also applies to FCO participants and participant organizations. See January 30 Letter, *supra* note 4. See also PHLX Rule 13, ''Foreign Currency Options Participant,'' which provides that FCO participants are subject to the provisions of the Exchange's rules that are applicable to a member of the Exchange and states that each reference to a member of the Exchange in the PHLX's rules is deemed to pertain also to FCO participants.

[7] The PHLX's minor plan, codified in PHLX Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary action. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[8] See Securities Exchange Act Release No. 26899 (June 7, 1989), 54 FR 25526 (June 15, 1989) (order approving File No. SR–PHLX–89–20).

[9] The two-business day requirement applies, for example, to requests for books and records. See Letter from Edith Hallahan, Special Counsel, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated November 30, 1994.

[10] Under the Advice F–8's fine schedule, as amended, the Exchange will impose a fine of $200 for the first occurrence, $1,000 for the second occurrence, $2,500 for the third occurrence, and a sanction discretionary with the Exchange's Business Conduct Committee (''BCC'') for the fourth and subsequent occurrences.

[11] 15 U.S.C. 78f(b)(5) (1988).

[12] See Securities Exchange Act Release Nos. 27151 (August 18, 1989), 54 FR 35972 (August 30, 1989) (order approving File No. SR–PHLX–89–20); and 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988) (order approving File No. SR–NYSE–87–10).

revised F–8 prompt compliance requirement to matters involving equities, equity options, index options, and FCOs, and to extend the prompt compliance requirement to information requests made by the Exchange in connection with any regulatory inquiry, investigation, or examination in order to expedite the Exchange's investigations and to provide consistent treatment for all Exchange requests for information. In addition, the Commission believes that including Advice F–8 in the Exchange's minor rule plan will enable the PHLX to impose immediate sanctions for failures to respond to Exchange requests for information, thereby encouraging timely compliance with the provisions of Advice F–8.[13] Moreover, the Commission believes that it is appropriate to include Advice F–8 in the Exchange's minor rule plan because failures to respond to Exchange requests for information are objective in nature and are easily verifiable, and thus lend themselves to the use of expedited proceedings.

The Commission believes it is reasonable for the PHLX to require members to provide information within two business days for Examinations Department requests, and within 10 business days for all other Exchange requests for information. In this regard, the Commission notes that Examinations Department requests will be made in connection with books and records which members must maintain on an ongoing basis and which should be readily available. In contrast, other information requests made by the Exchange may involve events which occurred in the past and for which information may not be readily available.[14]

The Commission believes that it is reasonable for the PHLX to amend Advice F–8 to reduce the fine for a first violation of the Advice from $500 to $200, and to provide that each additional request for information not furnished within the allotted time period may be considered as a separate occurrence for purposes of the Advice's fine schedule. The Commission believes that this provision should help to deter delays in compliance with Exchange requests for information and result in appropriate discipline, which should further ensure the protection of investors and the public interest.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to make the treatment of equities under Advice F–8 consistent with the treatment of equity options, index options, and FCOs. The Commission notes that the portion of the proposal applicable to equity options, index options, and FCOs was subject to the full notice and comment period and that no comments were received on that portion of the proposal. Since Amendment No. 1 makes the treatment of equities under Advice F–8 consistent with the treatment of options, Amendment No. 1 raises no new regulatory issues. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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 31, 1995.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–PHLX–94–61) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11510 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

[13] Under the PHLX's minor rule plan, the Exchange may impose a fine not to exceed $2,500 for violations of Advices in lieu of commencing a disciplinary proceeding. In any action taken under the minor rule plan, the PHLX must serve the person against whom a fine is imposed with a written statement setting forth (1) the Advice(s) alleged to have been violated; (2) the act or omission constituting each violation; (3) the fine imposed for each violation; and (4) the date by which the determination becomes final and the fine becomes due and payable to the Exchange, or when the determination must be contested. Any person against whom a fine is imposed pursuant to the minor rule plan may contest the Exchange's determination by filing an answer with the Exchange department taking the action, when the matter will be referred to the Exchange's BCC for their consideration.

[14] For example, the Exchange's Market Surveillance Department may request information in connection with a particular trade or trades or a customer complaint about the handling of an order.

[15] 15 U.S.C. 78s(b)(2) (1982).

[16] 17 CFR 200.30–3(a)(12) (1994).

---

**[Release No. 34–35678; International Series Release No. 809; File No. SR–Phlx–95–20]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Trading of Customized Foreign Currency Options on the Italian Lira

May 4, 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 5, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to trade customized foreign currency options (''FCOs'') on the Italian lira. The text of the proposed rule change is available at the Office of the Secretary, the 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 Phlx 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 Phlx 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 the Statutory Basis for, the Proposed Rule Change*

Currently the Phlx offers listed FCOs on the British pound, French franc, Swiss franc, Japanese yen, Canadian dollar, Australian dollar, German mark and European Currency Unit. Since November 1994, the Exchange has offered the ability to trade ''customized'' FCOs on all of these currencies.[1] The Exchange now proposes to add the Italian lira to the list of approved currencies on which customized FCOs may be listed and traded pursuant to Exchange Rule 1069. Thus, there would be no continuously quoted series of Italian lira contracts. Rule 1069(a)(1) provides that customized FCOs may be traded on any approved underlying foreign currency pursuant to Exchange Rule 1009, so the Exchange proposes to amend Rule 1009 to add the Italian lira to the list of approved underlying foreign currencies.

The Exchange represents that the Italian lira accounts for a significant portion of the inter-bank foreign exchange market turnover. According to the Bank for International Settlements (''BIS''), the Italian lira represents the ninth most active interbank currency traded against the U.S. dollar, accounting for 2.4% or more of inter-bank trading.[2] Moreover, over 87% of the activity in the lira is against either the U.S. dollar (58%) or the German Mark (29%).[3] The Italian lira is not pegged to a rate of exchange *vis a vis* the U.S. dollar. Further, the United States has substantial trade relations with Italy.

The Exchange represents that the initial and maintenance customer margin levels for the Italian lira will initially be set at 4%, which would cover 98.58% of all seven day price movements over the last two years.[4] Pursuant to Rule 1069(a)(1)(B), users would be able to trade customized FCOs between the Italian lira and any other approved foreign currency. Currency pairs between the Italian lira and the Australian dollar and between the Italian lira and the Canadian dollar have exhibited a correlation or less than .25 over the preceding two year period and will be placed in Tier II under Exchange Rule 722, thereby requiring 6% margin.[5] All other currency pairs involving the lira would be placed in Tier I (4% margin required) because their correlations have exceeded .25.[6]

The contract size for the Italian lira would be 50,000,000 lira.[7] The premiums will be quoted in thousandths of a cent per unit for U.S. dollar/Italian lira contracts and the minimum premium would be $0.(00000) 01 per unit which equals $5.00. Exchange Rule 1069(j)(1)(A) will be added to provide that, because the Exchange does not have continuously quoted FCOs on the Italian lira, there will be no quote spread parameters applicable to customized FCOs on the Italian lira.[8]

Consistent with the Phlx's other approved foreign currencies, Exchange Rule 1033 will be amended to specify the bid and offer rules for customized FCOs based on the Italian lira. Similarly, Rule 1034 will be amended to provide that the Exchange will determine the minimum fractional change applicable to Italian lira customized FCOs.[9]

The Exchange believes that the foregoing rule change proposal is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information, and facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by offering investors the ability to trade options on a major international currency in an auction market environment with all of the attendant protections as an alternative to trading it in the over-the-counter market.

*(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 solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[1] More specifically, customized FCOs provide investors with the ability, within specified limits, to trade FCOs with customized strike prices, cross-rate FCOs on any two approved currencies, and FCOs where the U.S. dollar is the underlying currency. In addition, FCO participants may express quotes for customized FCOs as a percentage of the underlying currency, in addition to quoting in terms of the base currency per unit of the underlying currency. See Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1995) (''Exchange Act Release No. 34925).

[2] See BIS Central Bank of Foreign Exchange Market Activity in April 1992 (March 1993).

[3] *Id.*

[4] The Commission notes that the margin level review currently applicable to customized FCOs on the Exchange's existing approved foreign currencies will also apply to customized FCOs involving the Italian lira. *See* Exchange Act Release No. 34925, *supra* note. 1.

[5] *Id.*

[6] *Id.*

[7] Based on an exchange rate of 1,709.4 Italian lira/U.S. dollars on April 5, 1995, as published in the Wall Street Journal, this would correspond to an opening position for an Italian lira customized FCO transaction (*i.e.*, 200 contracts) valued at approximately $5,850,000.

[8] Pursuant to Exchange Rule 1069(j)(1), quote spread parameters for customized strike FCOs on approved foreign currencies are twice those provided in Rule 1014(c). Because the Phlx does not list regular FCOs on the Italian lira (and will not be able to list regular FCOs on the lira pursuant to this proposal), no quote spread parameters for the lira are specified in Rule 1014(c).

[9] Specifically, the Exchange is proposing a minimum fractional change of $0. (00000)01 for Italian lira customized FCOs. Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Brad Ritter, Senior Counsel, Office of Market Supervision, Division of Market Regulation, Commission, on May 4, 1995. The Commission notes that the Exchange may be required to submit a rule filing pursuant to Section 19(b) of the Act prior to altering this minimum fractional change level.

the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–95–20 and should be submitted by May 31, 1995.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11511 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12) (1994).

## Requests Under Review by Office of Management and Budget

*Agency Clearance Officer:* Michael E. Bartell, (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:*

Regulation 12B—File No. 270–70
Form 8–A—File No. 270–54

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 (Commission) has submitted to the Office of Management and Budget requests for approval of extension on previously approved collections for the following:

Regulation 12B sets forth instructions and procedures to be followed by persons filing registration statements under Section 12 of the Exchange Act or reports under Section 13 or 15(d) of the Act. This regulation has been designated as imposing an administrative burden of one hour, because the actual regulatory burdens are established by the individual forms that refer to the items in the regulation.

Form 8–A elicits material information concerning securities to be registered on national securities exchange or other publicly-traded securities in order that investors may make informed and knowledgeable investment decisions. It is estimated that Form 8–A is filed by 1,940 respondents at an estimated 7.5 burden hours per response for a total annual burden of 14,550 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 Michael E. Bartell, Associate Executive 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, Office of Management and Budget, Project numbers 3235–0062 (Regulation 12B) and 3235–0056 (Form 8–A), Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: May 1, 1995.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11445 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–35667; File No. SR–CHX–95–06]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to Article V, Rule 3, Which Pertains to the Registration and Fingerprinting of Floor Employees, and the Imposition of an Initial Registration Fee on Clerks

May 3, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 1, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization (''SRO''). 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 Exchange proposes to add interpretation and policies .10, .02 and.03 under Rule 3 of Article V of the Exchange's Rules and to add a new clerk's fee.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Rule 3 of Article V of the Exchange's rules states that employees of members or member organizations may not be admitted to the Floor unless such employees are registered with and approved by the Exchange. The registration process currently requires completion of an application card and data sheet that call for disclosure of very limited information. Currently, only Floor employees that accept orders from the public and applicants for membership are required to submit a completed Uniform Application for Securities Industry Registration or Transfer (''Form U–4'') to the Exchange.[1]

Under the proposal, all Floor employees will be required to submit a Form U–4 in order to become registered. The Form U–4 requires detailed disclosure of background information, including information regarding employment and disciplinary history, and is the standard industry form submitted to SROs for individuals required to be registered (including securities salespersons and traders). The Form U–4 also requires this information to be updated whenever the information submitted becomes inaccurate or incomplete. The Exchange also has imposed a requirement that a member (or member organization) shall promptly give written notice of termination of a Floor employee to the Exchange on the Uniform Termination Notice for Securities Industry Registration (Form U–5)[2] and concurrently provide a copy

[1] Form U–4 is used by the various securities SROs as part of their registration and oversight of member organization personnel. Specifically, Form U–4 is the uniform form for licensing salespersons within the states and various SROs. An individual applying for registration must file Form U–4 with the Central Registration Depository (''CRD'') operated by the National Association of Securities Dealers (''NASD''). Thereafter, the registered person is obligated to update this information as changes occur. The CRD is a computer data base containing current registration information as well as the regulatory and enforcement actions taken against securities industry personnel for access by the Commission, state regulators and certain SROs.

[2] Form U–5 contains information relating to the circumstances surrounding the termination of an applicant's prior employment, and must be completed and submitted to the NASD, and other SROs requiring such a submission under their

Continued

of such notice to the person who has been terminated.

Requiring each Floor employee to submit the Form U–4 will enable the Exchange to fulfill its regulatory responsibilities better by identifying those individuals who are subject to a statutory disqualification under Section 3(a)(39) of the Act.[3] The Exchange is required to make a determination in each case where an individual who is subject to a statutory disqualification (*e.g.*, is suspended or barred by an SRO, or has been convicted of any felony or certain enumerated misdemeanors) seeks admission to or continuance in membership, participation in, or association with a member or member organization. In addition, Rule 19h–1 [4] under the Act requires that the Exchange provide detailed information to the Commission whenever it determines to admit or continue in membership or participation or association with a member or member organization, any person who is subject to a statutory disqualification.

Additional provisions of the proposal will require all Floor Employees of members and member organizations and all Exchange members to be fingerprinted and to submit such fingerprints to the Exchange for identification, background checking, and appropriate processing. The proposed amendments to require fingerprinting of all Exchange members and floor clerks also will help in identifying persons who are subject to a statutory disqualification as well as enhance overall security on the Exchange Floor.

Fingerprinting currently is required for each partner, director, officer or employee of broker-dealers pursuant to Rule 17f–2 [5] under the Act, with certain exceptions. Floor clerks are not required by Rule 17f–2 to submit fingerprints because they do not physically handle monies or securities.[6] The Exchange, however, now has determined that all floor members and floor employees should be fingerprinted to help to ensure the security of the CHX staff, members, and the Exchange facility. The requirement to fingerprint members and floor employees is consistent with the requirements of other exchanges.[7]

The requirements of the amended rules to submit Form U–4 and fingerprints will apply to all current and prospective Floor employees and members.

Finally, the proposed rule change imposes an initial registration fee on clerks of $50.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 17(f)(2) of the Act, which requires (with certain exceptions) fingerprinting of each partner, director, officer or employee of broker-dealers.

The rule change also is consistent with Section 6(c)(2) of the Act because having more comprehensive background information submitted on Form U–4 will enable the Exchange to identify individuals who are subject to statutory disqualification under Section 3(a)(39) of the Act.

The rule change advances the objectives of Rule 19h–1 under the Act, which requires detailed reporting to the Commission of the Exchange's determination to admit to, or continue in, membership or participation or association with a member, persons subject to statutory disqualification.

Finally, the proposed rule change is consistent with Section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade and to protect the investing public.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No comments were solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–95–06 and should be submitted by May 31, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11516 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

---

**[Release No. 34–35674; File No. SR–MSRB–95–05]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying The Applicable Time Frames for Customer Account Transfers

May 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on march 31, 1995, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–MSRB–95–5) as described in Items I, II, and III below, which items have been prepared primarily by the MSRB. The Commission is publishing this notice to

respective rules, whenever a registered employee is terminated.

[3] 15 U.S.C. 78c(a)(39) (1988).

[4] 17 CFR 240.19h–1 (1994).

[5] 17 CFR 240.17f–2 (1994)

[6] See 17 CFR 240.17f–2(a)(1)(i).

[7] See, *e.g.*, NYSE Rule 35.60 (requiring fingerprinting of all floor employees of members and member organizations and all employees of members and member organizations who have submitted registration applications for admission to the floor).

[1] 15 U.S.C. 78s(b)(1) (1988).

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 purpose of the proposed rule is to modify MSRB Rule G–26 regarding customer account transfers to require that a dealer carrying a customer account in municipal securities validate and return customer account transfer instructions to the dealer designated to receive the account within three business days and that the dealer carrying the account complete the transfer of the account within four business days after validation of the transfer instructions.

The proposed rule change supports the movement of the securities industry to three-day settlement in June 1995 and parallels recent amendments to the customer account transfer rules of the New York Stock Exchange (''NYSE'')[2] and the National Association of Securities Dealers (''NASD'').[3] Recent enhancements also were made to the Automated Customer Account Transfer System operated by National Securities Clearing Corporation (''NSCC'') accelerating the time in which an account can be transferred.[4] The proposed rule change is consistent with those enhancements. The MSRB requests that the Commission set the effective date for thirty days after filing.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In October 1993, the Commission adopted Rule 15c6–1[6] under the Act which establishes three business days after the trade date (''T+3''), instead of five business days (''T+5''), as the standard settlement cycle for most securities transactions.[7] The rule will become effective June 7, 1995.[8] Although municipal securities were not included within the scope of Rule 15c6–1, the Commission asked the Board to undertake a commitment to T+3 settlement for the municipal securities industry.[9]

On February 28, 1995, the Commission approved amendments to MSRB rules G–12 on uniform practice and rule G–15 on confirmation, clearance, and settlement of transactions with customers redefining regular-way settlement as three business days.[10] In addition, the MSRB has been reviewing its rules to determine if there are other appropriate changes to its rules that need to be made to facilitate the movement to T+3 settlement. The current proposed amendment to rule G–26 has been identified as such a necessary change.

The proposed rule change would require that a dealer carrying a customer account in municipal securities validate and return customer account transfer instructions to the dealer designated to receive the account within three business days following receipt of the transfer instructions. The rule currently allows five business days for this to occur. In addition, the dealer carrying the account would be required to complete the transfer of the account within four business days following validation of the transfer instructions in lieu of five business days as is currently stated in the rule.

As set forth in Section 15B(b)(2)(C)[11] of the Act, the MSRB has the authority to adopt rules to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities. The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(C) because the proposal promotes uniformity with the customer account transfer procedures of the other self-regulatory organizations thereby providing greater efficiency in the transfer of customer accounts.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The MSRB has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five days prior to the filing date; and (4) does not become operative for thirty days from the date of its filing on March 31, 1995, the proposed rule change 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 the proposal would qualify as a ''non-controversial filing'' in that the proposed standards do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. At any time within sixty days of the filing of the 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

[2] For a description of the NYSE's amendments to its customer account transfer rules, refer to Securities Exchange Act Release No. 34633 (September 2, 1994), 59 FR 46872 [File No. SR–NYSE–94–21] (approving proposed rule change).

[3] For a description of the NASD's amendments to its customer account transfer rules, refer to Securities Exchange Act Release No. 35031 (November 30, 1994), 59 FR 62761 [File No. SR–NASD–94–56] (granting partial accelerated approval of proposed rule change).

[4] For a description of the NSCC's enhancements to its customer account transfer system, refer to Securities Exchange Act Release No. 34879 (October 21, 1994), 59 FR 54229 [File No. SR–NSCC–94–13] (approving proposed rule change).

[5] The Commission has modified the text of the summaries prepared by MSRB.

[6] 17 CFR 240.15c6–1.

[7] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1).

[8] Securities Exchange Act Release No. 34952 (November 9, 1994, 59 FR 59137 (changing effective date from June 1, 1995 to June 7, 1995).

[9] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6–1).

[10] Securities Exchange Act Release No. 35427 (February 28, 1995, 60 FR 12798 [File No. SR–MSRB–94–10] (approving proposed rule change).

[11] 15 U.S.C. 78o–4(b)(2)(C).

Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. All submissions should refer to the file number SR–MSRB–95–05 and should be submitted by May 31, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11517 Filed 5–9–95; 8:45 am]

**BILLING CODE 8010–01–M**

---

**[Release No. 34–35675; File No. SR–MSRB–95–3]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to the Submission of Transaction Information for Confirmation, Clearance, and Settlement of Transactions With Customers

May 4, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 23, 1995, the Municipal Securities Rulemaking Board (''MSRB'') file with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the MSRB. 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 MSRB is filing proposed amendments to MSRB rule G–15 regarding the confirmation, clearance, and settlement of transactions with customers. The amendments would require dealers to submit delivery versus payment and receipt versus payment (''DVP/RVP'') customer transactions to an automated confirmation/acknowledgement system no later than the end of trade date (''T''). The MSRB requests that the amendments be made effective thirty days after approval by 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 MSRB 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 texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On October 5, 1993, the Commission adopted Rule 15c6–1 under the Act, which establishes three business days after the trade date (''T+3'') instead of five business days (''T+5'') as the standard settlement time frame for most broker-dealer transactions.[3] Recognizing the differences between the corporate and municipal securities markets and the unique role the MSRB has in overseeing the municipal securities market, the Commission did not include municipal securities within the scope of Rule 15C6–1.[4] The Commission, however, did formally request that the MSRB undertake a commitment to T+3 settlement for municipal securities to ensure consistency in settlement cycles in the corporate and municipal markets.

On February 29, 1995, the Commission approved amendments to MSRB rules G–12 on uniform practice and rule G–15 on confirmation, clearance, and settlement of transactions with customers. These amendments established three business days as the standard settlement time frame for regular-way transactions in municipal securities.[5] The MSRB has been reviewing its rules to determine whether or not additional rule changes are necessary to facilitate the movement to T+3 settlement. The MSRB has determined that amendment rule G–15 is necessary to facilitate T+3 settlement for municipal securities transactions.

Currently, rule G–15(d) states that a dealer shall give or send to a DVP/RVP customer a confirmation with respect to an execution of an order no later than the close of business on the next business day after execution (''T+1'').[6] The rule currently does not specify the timing for the submission of transaction data to an automated confirmation/acknowledgement system although the rule does require nearly all municipal securities transactions with institutional customers to be process in such a system.[7] Under the proposed rule change, giving or sending of the confirmation and the submission of transaction data to an automated confirmation/acknowledgement system would occur on the trade date rather than T+1.[8] In a T+3 environment, less time will exist for the necessary communications between dealers and institutional customers to clear and settle transactions. The proposed rule change accordingly would require the

---

[12] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by MSRB.

[3] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6–1). On November 16, 1994, the Commission changed the effective date of Rule 15c6–1 from June 1, 1995 to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

[4] Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891.

[5] Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 [File No. SR–MSRB–94–10].

[6] The terms ''DVP/RVP customer'' and ''institutional customer'' both refer to transactions between dealers and customers that are settled on a delivery versus payment or receipt versus payment basis.

[7] The automated clearance and settlement process includes several steps. Initially, dealers submit transaction information to an automated confirmation/acknowledgement system followed by the institutional customer receiving notification requesting acknowledgement of the transaction through the automated system. Once the institutional customer acknowledges the transaction, the transaction is then ready for automated settlement to occur at the depository on settlement date.

[8] Rule G–15(a) states that a confirmation containing certain information must be given or sent to each customer. Some dealers use the automated confirmation/acknowledgement system as the exclusive mechanism for confirming transactions to DVP/RVP customers (*i.e.,* no paper confirmation is sent). The MSRB has stated that use of the automated confirmation/acknowledgement system to deliver a confirmation meeting the information requirements of rule G–15(a) is permissible as long as all information required by rule G–15(a) is included on the electronic confirmation generated by that system. The MSRB, however, has not specified that the automated confirmation/acknowledgement system is the exclusive mechanism for sending confirmation information required by rule G–15(a) to DVP/RVP customers. Some dealers continue to use both the automated confirmation/acknowledgement system and also send paper confirmations.

communication between dealers and institutional customers begin on trade date. In addition, the success of the proposed Phase II of the MSRB's Transaction Reporting Program will depend on timely and accurate submission of institutional customer transaction data on trade date to the automated confirmation/acknowledgement system.[9]

Section 15B(b)(2)(C) of the Act provides that the MSRB has the authority to adopt rules:

> To foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.[10]

The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because the proposal will facilities clearance and settlement of municipal securities in a T+3 environmental by helping to ensure a more timely confirmation and acknowledgement of DVP/RVP customer transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

the MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The MSRB has neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. People making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–95–3 and should be submitted by May 31, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11518 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

[9] For a complete description of Phase II of the MSRB's Transaction Reporting Program, refer to ''Transaction Reporting Program for Municipal Securities: Phase II,'' MSRB Reports, Vol. 15, No. 1 (April 1995).

[10] 15 U.S.C. 78o–3(b)(2)(C) (1988).

[11] 17 CFR 200.30–3(a)(12) (1994).

---

**[Release No. 34–35676; File No. SR–PHILADEP–94–06]**

## Self-Regulatory Organizations; The Philadelphia Depository Trust Company; Order Granting Temporary Approval of a Proposed Rule Change Extending the Pilot Program for the Fully Automated Securities Transfer Reconciliation Accounting Control System

May 4, 1995.

On December 14, 1994, the Philadelphia Depository Trust Company (''PHILADEP'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–PHILADEP–94–06) under Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to extend the pilot program governing the Fully Automated Securities Transfer Reconciliation Accounting Control System (''FASTRACS'') through December 29, 1995. Notice of the proposal was published in the **Federal Register** on March 17, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change and extending the FASTRACS pilot program on a temporary basis through December 29, 1995. The program will be limited to three transfer agents for the duration of the temporary approval period.

## I. Description

On July 19, 1994, the Commission approved a proposed rule change establishing a pilot program for FASTRACS for the transfer of certain securities between PHILADEP and certain transfer agents.[3] FASTRACS is an automated program by which PHILADEP and the participating transfer agents use a master balance certificate to evidence the number of securities of a particular issue that are registered in PHILADEP's nominee name. The transfer agents have custody of the securities in the form of balance certificates. The transfer agents adjust daily the balance certificates to reflect PHILADEP's withdrawal and deposit activity.

According to PHILADEP, the pilot program has operated successfully in accordance with the operational and technical specifications; however, testing of the program is not complete.[4] Therefore, PHILADEP has requested an extension of the FASTRACS pilot program on a temporary basis through December 29, 1995.

## II. Discussion

As discussed in detail in the order initially approving PHILADEP's FASTRACS pilot program,[5] one of the primary reasons for approval of the FASTRACS program is to enable PHILADEP to provide for the safe and efficient clearance and settlement of securities transactions and to assure the

[1] 15 U.S.C. 78(b)(1) (1988).

[2] Securities Exchange Act Release No. 35470 (March 10, 1995), 60 FR 14477.

[3] For a complete description of PHILADEP's FASTRACS, refer to Securities Exchange Act Release No. 34404 (July 19, 1994) 59 FR 38010 [File No. SR–PHILADEP–90–03] (order approving FASTRACS program on a temporary basis).

[4] Currently, PHILADEP has completed testing with two transfer agents who are now fully operational with FASTRACS. PHILADEP continues to conduct testing with a third transfer agent. Upon successful completion of testing with the third transfer agent, PHILADEP will file a proposed rule change under Section 19(b) of the Act to seek permanent approval of the FASTRACS program. Telephone conversation between Keith Kessel, Compliance Officer, PHILADEP, and Margaret J. Robb, Attorney, Division of Market Regulation, Commission (December 22, 1994).

[5] *Supra* note 3.

safeguarding of securities and funds in its custody or control or for which it is responsible in accordance with Section 17A(b)(3)(A) and (F) of the Act.[6] PHILADEP has stated that the FASTRACS program has functioned effectively in this capacity since its initial approval on July 19, 1994; however, testing of the program is not complete. Therefore, the Commission believes that an extension of the FASTRACS pilot program through December 29, 1995, is appropriate because it will provide PHILADEP with the opportunity to continue testing the FASTRACS program and to report the results of its testing to the Commission.

## III. Conclusion

The Commission finds that PHILADEP's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PHILADEP–94–06) be, and hereby is, approved through December 29, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11515 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–21041; International Series Release No. 807; 812–9340]**

## Bayerische Vereinsbank Aktiengesellschaft, et al.

May 4, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Bayerische Vereinsbank Aktiengesellschaft (''BV'') and Vereinsbank Finance (Delaware) Inc. (''Issuer'').

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act that would exempt applicants from subparagraphs (a)(1) and (a)(3) of rule 3a–5 under the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit Issuer, a wholly-owned BV subsidiary, to sell its commercial paper in the United States to raise funds for the business operations of BV without registering as an investment company.

**FILING DATE:** The application was filed on December 5, 1994, and amended on March 23, 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 applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 30, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants: 335 Madison Avenue, New York, NY 10017.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or Robert A. Robertson, Branch Chief, at (202) 942–0546 (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.

## Applicants' Representations

1. BV is a bank organized under the laws of the Federal Republic of Germany (''Germany'') with its headquarters in Munich. It is a publicly held corporation with limited liability (Aktiengesellschaft), the shares of which are quoted on all German stock exchanges. BV and its subsidiaries are active in the mortgage business, commercial banking, leasing, and funds management/financial advisory products. BV is subject to supervision by the Federal Banking Supervisory Office of Germany, an independent federal authority, and by the Deutsche Bundesbank, the German Central Bank. Applicants represent that regulation by German banking authorities is comparable in many respects to the supervision of United States commercial banks.

2. Issuer, a Delaware corporation, is a wholly-owned subsidiary of BV. Initially, Issuer proposes to issue and sell in the United States short-term negotiable promissory notes of the type exempt from the registration requirements of the Securities Act of 1933 by virtue of section 3(a)(3) thereof and generally referred to as commercial paper (the ''Notes''). The Notes would be offered publicly, only to the types of sophisticated and largely institutional investors that ordinarily participate in the United States commercial paper market. The proceeds from the sale of the Notes would be used to finance the business activities of BV. Issuer may in the future issue and sell other debt securities.

3. Applicants require exemptive relief from subparagraphs (a)(1) and (a)(3) of rule 3a–5, since BV will not unconditionally guarantee the obligations of Issuer to pay the Notes, as required by the rule. BV will provide a functional equivalent of a guarantee. BV requires the proposed structure for tax reasons and because the German Federal Banking Law and the German Federal Supervisory Office could require BV to maintain additional funds if BV provided an unconditional guarantee or letter of credit.

4. Issuer would deposit the net proceeds from the sale of the Notes (the ''Deposits'') at BV's Cayman Islands branch (the ''Branch'') pursuant to a deposit agreement (the ''Deposit Agreement'') to be entered into by Issuer, the Branch, and BV. Substantially all of Issuer's assets would consist of a single evidence of indebtedness of the Branch issued to Issuer evidencing Issuer's deposits. The Branch unconditionally agrees to repay to Issuer each Deposit made by Issuer at the Branch, including accrued interest, on the maturity date of the Deposit. Noteholders would be assigned as security and granted a security interest in the Deposits and accrued interest corresponding to their Notes. If Issuer fails to pay a Note according to its terms, the Deposit Agreement entitles the Noteholder to receive payments by the Branch of the Deposit and accrued interest.

5. Under German law and pursuant to the Deposit Agreement, the repayment obligation of the Branch in respect of the Deposits is an obligation of BV. BV's obligations regarding its liabilities to Issuer will rank at least *pari passu* among themselves and with all other unsecured and unsubortinated indebtedness, including deposit liabilities, of BV and will be superior to rights of shareholders.

6. To assure that the proceeds from the sale of the Notes will be deposited with the Branch, Issuer and the Branch will enter into an agreement (''Issuing and Paying Agency Agreement'') with a commercial bank pursuant to which the Branch would have an operating account with the commercial bank. The

[6] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[7] 17 CFR 200.30–3(a)(12) (1994).

payments of the proceeds of the sale of the Notes to the Branch would be made to this account, and the payments by Issuer or the Branch to the Noteholders would be made from this account by appropriate debits or credits, respectively. The Issuing and Paying Agency Agreement states that the Branch will have exclusive control over the account, and the sole right of withdrawal of funds therefrom. At the moment the proceeds from the sale of the Notes are deposited in the Branch's account at a commercial bank, the Noteholder would have a right of action against BV under his or her security interest in the Deposit and, therefore, the Noteholder's security interest in the Deposit would attach.

7. BV, in connection with the offering of the Notes, would submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and would appoint Issuer as agent to accept any process which may be served in any suit, action, or proceeding brought against BV based upon its obligations to Issuer. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process would be irrevocable until all amounts due and to become due with respect to outstanding Deposits and all outstanding obligations of BV to Issuer have been paid.

## Applicants' Legal Analysis

1. Without exemptive relief, Issuer may be an investment company, as defined in section 3(a) of the Act. Rule 3a–5 states that a finance subsidiary will not be considered an investment company under section 3(a), provided the subsidiary meets certain requirements. Applicants believe that Issuer would meet the requirements of rule 3a–5, except that the Notes and any other debt securities and non-voting preferred stock which Issuer may issue in the future would not be guaranteed in a technical sense by BV, as required by subparagraphs (a)(1) and (a)(3) of the rule. Instead, BV would provide the functional equivalent of a guarantee. Applicants believe that the entitlement of the Noteholders to receive payment by the Branch of the Deposit corresponding to the Notes in case of failure of Issuer to pay the Notes upon maturity would be the substantial equivalent of a guarantee. Applicants represent that the business and fiscal considerations behind BV's desire to use Issuer as a financing vehicle to sell the Notes in the United States in no way impinge upon the public policy concerns, such as investor protection, that underlie the Act.

## Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. BV will state expressly in the Deposit Agreement that the obligations of the Branch to the Issuer and the Noteholders are BV's own obligations.

2. If the Issuer fails to pay a Note in accordance with its terms, the Deposit Agreement will entitle the Noteholder to receive payment from the Branch. Noteholders will have a direct cause of action against BV in the event of any default in payment of the Notes.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11514 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–21039; File No. 812–9288]**

## Companion Life Insurance Company, et al.

May 3, 1995.

**AGENCY:** U.S. Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Companion Life Insurance Company (''Companion Life''), Companion Life Separate Account C (the ''Separate Account'') and Mutual of Omaha Investor Services, Inc. (''Mutual of Omaha'').

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2).

**SUMMARY OF APPLICATION:** An order is sought exempting Applicants and principal underwriters of certain flexible payment deferred variable annuity contracts (the ''Policies'') to the extent necessary to permit the payment to Companion Life of a mortality and expense risk charge from the assets of the Separate Account under the Policies.

**FILING DATE:** The application was filed on October 17, 1994 and amended and restated on April 4, 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 Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 30, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, Companion Life Insurance Company, 401 Theodore Fremd Avenue, Rye, New York 10580–1493.

**FOR FURTHER INFORMATION CONTACT:** Edward P. Macdonald, Staff Attorney, or Wendy Friedlander, Deputy Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

## Applicant's Representations

1. Companion life is a stock life insurance company, incorporated under the laws of the State of New York on June 3, 1949, and engaged in the sale of life insurance and annuity policies in New York State. It is also licensed in New Jersey and Connecticut but does not currently do business in these states. Companion Life, a wholly-owned subsidiary of United of Omaha Life Insurance Company, is the depositor of the Separate Account.

2. The Separate Account was established by Companion Life as a separate investment account, on February 18, 1994, under the laws of the State of New York to serve as the funding medium for the Policies. The Separate Account currently has nine subaccounts (the ''Subaccounts'') and is registered under the Act as a unit investment trust. Each Subaccount invests in a corresponding portfolio of an underlying management investment company (''Fund''). Each Fund is registered under the Act as an open-end, management investment company and its shares are registered under the Securities Act of 1933.

3. Mutual of Omaha serves as distributor and principal underwriter for the Policies. It is registered with the SEC as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. (''NASD''). Broker-dealers other than Mutual of Omaha may also serve as distributors and principal underwriters of the Policies, to the extent the Policies are sold through alternate distribution channels. Any

such other broker-dealer will be registered under the Securities Exchange Act of 1934 as a broker-dealer and will be a member of the NASD.

4. The Policies may be purchased on a non-tax qualified basis (''Non-Qualified Policies'') or they may be purchased and used in connection with retirement plans that qualify for special federal tax treatment under Sections 401, 403, 408 or 457 of the Internal Revenue Code (''Qualified Policies''). The Policies require a minimum initial purchase payment of at least $5,000, and subsequent purchase payments must be at least $500. An owner can allocate purchase payments to one or more Subaccounts or to a fixed account option. which is part of Companion Life's general account.

5. An owner can transfer accumulation value from one Subaccount of the Separate Account to another, or from the Separate Account to the fixed account within certain limits. The minimum amount which may be transferred is the lesser of $500 or the entire Subaccount value. If the Subaccount value remaining after a transfer is less than $500, Companion Life reserves the right, at its discretion, either to deny the transfer request or to include that amount as part of the transfer. Transfers out of a Subaccount currently may be made as often as the owner wishes, subject to the mimimum amount specified above. Companion Life reserves the right to otherwise limit or restrict transfers in the future or to eliminate the transfer privilege. Companion Life also reserves the right to restrict transfers from the Separate Account to the fixed account of amounts previously transferred from the fixed account, for a period of time determined by Companion Life.

6. A death benefit is available under the Policy. If an owner dies prior to age 76, the death benefit will equal the greatest of (a) the accumulation value (without deduction of a withdrawal charge) as of the end of the valuation period during which due proof of death and an election of payout option is received by Companion Life's service office, less any charge for applicable premium taxes; (b) the sum of net purchase payments less partial withdrawals; or (c) in the eighth Policy year and later, the accumulation value as of the most recent 7-year Policy anniversary, less any amounts subsequently withdrawn and less any charge for applicable premium taxes. If any owner dies upon, or after age 76, the death benefit will equal the larger of (a) and (b) above.

7. On the last evaluation date of each Policy year prior to the annuity starting date and upon a complete surrender, Companion Life deducts from the accumulation value an annual fee of $30 to reimburse it for administrative expenses relating to the Policies. The fee will be deducted from each Subaccount based on the proportion that the accumulation value in each account bears to the total accumulation value. This charge is guaranteed not to increase for the duration of the Policy. Applicants represent that this charge will be deducted in reliance on Rule 26a–1 under the Act and represents reimbursement only for administrative costs expected to be incurred over the life of the Policy. Companion Life does not anticipate any profit from this charge.

8. Companion Life does not deduct a sales charge at the time of investment. However, a withdrawal charge may be deducted upon surrender or partial withdrawal of purchase payments. A withdrawal charge also may be deducted upon the election of certain annuity options. Withdrawal charges are not deducted upon the payment of a death benefit or, under Qualified Policies, any refund of contributions paid in excess of the owner's deductible amounts. The withdrawal charge equals a specified percentage of the purchase payment withdrawn. The withdrawal charge is calculated by multiplying the percentages specified in the table below by the amount of purchase payments withdrawn. The number of years since the date of the purchase payment being withdrawn will determine the withdrawal charge percentage that will apply to that purchase payment.

| Years since receipt of purchase payment | Applicable withdrawal charge percentage |
|---|---|
| 1 | 7 |
| 2 | 6 |
| 3 | 5 |
| 4 | 4 |
| 5 | 3 |
| 6 | 2 |
| 7 | 1 |
| 8 and later | 0 |

Each Policy year, up to 10% of all purchase payments, less any prior withdrawals, may be withdrawn without the imposition of the withdrawal charge. Purchase payments surrendered or withdrawn in excess of this 10% amount will be assessed the withdrawal charge.

9. Companion Life does not anticipate that the withdrawal charge will generate sufficient revenues to pay the cost of distributing the Policies. If these charges are insufficient to cover the expenses of distributing the Policies, the deficiency will be met from the general account assets of Companion Life, which may include amounts derived from the charge for mortality and expense risks.

10. Companion Life deducts a daily administrative charge to compensate it for expenses it incurs in the administration of the Policies and the separate Account. The charge is deducted from the assets of the Separate Account at an annual rate of 0.15%, and is guaranteed not to increase. Companion Life represents that this charge will be deducted to reliance on Rule 26a–1 under the Act and represents reimbursement only for administrative costs expected to be incurred over the life of the Policy. Companion Policy does not expect to make a profit from this charge.

11. Companion Life imposes an annual charge of 1.25% on the net assets of the Separate Account to compensate it for bearing certain mortality and expense risks in connection with the Policies. Of that amount .95% is attributable to the mortality risk, and .30%[1] is attributable to the expense risk. Companion Life guarantees that this charge will never exceed an annual rate of 1.25%. If the morality and expense risk charges under the Policies are insufficient to cover actual costs and assumed risks, the loss will be borne by Companion Life. Conversely, if the charge is more than sufficient to cover such costs, any excess will be profit to Companion Life. Companion Life currently anticipates a profit from this charge.

12. The mortality risk borne by Companion Life arises from its contractual obligation to make annuity payments regardless of how long all annuitants or any individual annuitant may live. This undertaking assures that neither an annuitant's own longevity, nor an improvement in general life expectancy, will adversely affect the periodic annuity payments that a payee will receive under a Policy. Companion Life also incurs a mortality risk in connection with the death benefit guarantee. There is no extra charge for this guarantee.

13. The expense risk assumed by Companion Life is the risk that its actual administrative costs will exceed the amount recovered from the administrative charge, the transfer fee (if imposed), the processing fee (if imposed) and the annual Policy fee.

14. Companion Life will deduct a charge for premium taxes, currently

[1] Applicants will file an amendment during the notice period to add these numbers.

ranging up to 3.5% on annuity policies issued by insurance companies. In addition, other government units within a state may levy such taxes.

15. Companion Life imposes a $10 transfer fee to any transfer in excess of 12 per Policy year. Companion Life deducts the transfer fee from the amount transferred. No charge will be imposed on transfers from the fixed account and transfers made in connection with the dollar cost averaging program do not count toward the 12 free transfers per year limit. Applicants represent that this charge will be deducted in reliance on Rule 26a–1 and represents reimbursement only for administrative costs expected to be incurred in processing transfers over the life of the Policies. Companion Life does not anticipate any profit from this charge.

## Applicant's Legal Analysis

1.Section 6(c) of the Act authorizes the Commission to grant an exemption from any provision, rule or regulation of the Act to the extent that it is necessary or appropriate in the public interest and consist with the protection of investors and the purposes fairly intended by the Policy and provisions of the Act. Sections 26(a)(2)(C) and 27(c)(2) of the Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants request exemptions from Sections 25(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a charge of 1.25% from the assets of the Separate Account to compensate Companion Life for the assumption of mortality and expense risks. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Policy and provisions of the Act.

3. Applicants request that the relief sought herein also apply to a class consisting of broker-dealers who may, in the future, act as principal underwriters of the Policies. Applicants believe that the terms of the relief requested with respect to future underwriters issuing the Policies are consistent with the standards enumerated in Section 6(c) of the Act. The requested relief would promote competitiveness in the variable annuity market by eliminating the need for Companion Life to file redundant exemptive applications for each new principal underwriter that distributes the Policies it issues, thereby reducing its administrative expenses and maximizing the efficient use of its resources. The delay and expense involved in having to repeatedly seek exemptive relief would impair Companion Life's ability to effectively take advantage of business opportunities as they arise and investors would not receive any benefit or additional protection thereby. Indeed, they might be disadvantaged as a result of Companion Life's increased overhead expenses. Thus, Applicants believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that Companion Life is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% on an annual basis under the Policies made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. Companion Life represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, guaranteed annuity rates. Companion Life will maintain at its administrative office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey.

5. Applicants acknowledge that the proceeds of the withdrawal charges may be insufficient to cover all costs relating to the distribution of the Policies. Applicants also acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Companion Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Policy owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Companion Life at its administrative offices and will be available to the Commission. Companion Life also represents that the Separate Account will only invest in management investment companies which undertake, in the event any such company adopts a plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company as defined in the Act, formulate and approve any such plan under Rule 12b–1.

## Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the Policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret M. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11444 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–21042; 812–9564]**

## Janus Investment Fund, et al.; Notice of Application

May 4, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Janus Investment Fund and Janus Aspen Series (collectively, the ''Trusts''), all existing and future series of the foregoing investment companies, Janus Capital Corporation (''Janus Capital''), and any other registered investment companies that now or in the future are advised by Janus Capital or an entity controlling, controlled by, or under common control with Janus Capital.[1]

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for an exemption from section 12(d)(1)(A)(ii), under sections 6(c) and 17(b) for an exemption from section 17(a), and under rule 17d–1 to permit certain transactions in accordance with section 17(d) and rule 17d–1.

**SUMMARY OF APPLICATION:** Applicants seek an order that would permit certain

[1] All existing investment companies that presently intend to rely on the requested order are named as applicants.

money market funds to sell their shares to affiliated investment companies and the money market funds subsequently to redeem such shares.

**FILING DATES:** The application was filed on April 5, 1995 and amended on April 27, 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 30, 1995 and should be accompanied by proof of service on the 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, N.W., Washington, D.C. 20549. Applicant, Janus Capital Corporation, 100 Fillmore Street, Suite 300, Denver, Colorado 80206–4923.

**FOR FURTHER INFORMATION CONTACT:** Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

## Applicant's Representations

1. The Trusts are open-end management investment companies that currently offer twenty-four series (each a ''Fund''). Four of the Funds are money market funds subject to the requirements of rule 2a–7 under the Act (together with any future money market funds, the ''Money Market Funds''). The other twenty Funds are non-money market funds (together with any future non-money market funds, the ''Non-Money Market Funds'').

2. Janus Capital serves as investment adviser and administrator for each of the Funds. Janus Distributors, Inc. serves as distributor for Janus Investment Fund. Shares of Janus Aspen Series are self-distributed. United Missouri Bank, N.A. serves as custodian for each Money Market Fund. Investors Fiduciary Trust Company serves as custodian and transfer agent for each Non-Money Market Fund. Janus Service Corporation is the transfer agent for each Money Market Fund.

3. The Money Market Funds seek current income, liquidity, and capital preservation by investing exclusively in short-term money market instruments, such as United States government securities, bank obligations, commercial paper, municipal obligations, or repurchase agreements secured by government securities. These short-term debt securities are valued at their amortized cost pursuant to rule 2a–7.

4. The Non-Money Market Funds invest in a variety of debt and/or equity securities in accordance with their respective investment objectives and policies. Each of the Funds has, or may be expected to have, uninvested cash in an account with the custodian. This cash either may be invested directly in individual short-term money market instruments or may not be invested in any portfolio securities.

5. Applicants seek an order that would permit (a) each of the Funds to utilize cash reserves that have not been invested in portfolio securities to purchase shares of one or more of the Money Market Funds (each such Fund, including Money Market Funds, purchasing shares of a Money Market Fund, is an ''Investing Fund'') and (b) each Money Market Fund to sell shares to, and redeem such shares from, an Investing Fund. By investing cash balances in the Money Market Funds as proposed, applicants believe that the Investing Funds will be able to combine their cash balances and thereby reduce their transaction costs, create more liquidity, enjoy greater returns, and further diversify their holdings. The policies of the Funds permit the Funds to purchase money market instruments, including shares of a money market fund.

6. The shareholders of the Investing Funds would not be subject to the imposition of double management fees. Janus Capital and its respective affiliated persons will remit to the respective Investing Funds, or waive, an amount equal to the investment advisory fees Janus Capital and its affiliated persons earn as a result of the Investing Funds' investments in the Money Market Funds to the extent the fees are based upon the Investing Funds' assets invested in shares of the Money Market Funds (the ''Reduction Amount''). Further, no sales charge, contingent deferred sales charge, 12b–1 fee, or other underwriting or distribution fee will be charged by the Money Market Funds with respect to the purchase or redemption of their shares. If a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio at the time of the investment.

7. Several of the Funds have voluntary expense cap arrangements with Janus Capital for the purpose of keeping each Fund's total expenses below a certain predetermined percentage amount (an ''Expense Waiver''). To the extent actual expenses of the Funds exceed these caps, Janus Capital waives or reimburses a Fund in the amount of the excess. Any applicable Expense Waiver will not limit the advisory and administrative fee waiver or remittance discussed above.

8. Applicants also request relief that would permit the Funds to invest uninvested cash in a Money Market Fund in excess of the percentage limitations set out in section 12(d)(1)(A)(ii) of the Act. Section 12(d)(1)(A)(ii) prohibits a registered investment company from acquiring the securities of another investment company if, immediately thereafter, the acquiring company would have more than 5% of its total assets invested in the securities of the selling company. Applicants propose that each Fund be permitted to invest in shares of a Money Market Fund so long as each Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of such Fund's total net assets or $2.5 million. Applicants will comply with all other provisions of section 12(d)(1).

## Applicants' Legal Analysis

1. Sections 17(a) (1) and (2) make it unlawful for any affiliated person of a registered investment company, or an affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. Because each fund may be deemed to be under common control with the other Funds, it may be an ''affiliated person,'' as defined in section 2(a)(3), of the other Funds. Accordingly, the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares of the Money Market Funds from the Investing Funds, would be prohibited under section 17(a).

2. Section 17(b) authorizes the SEC to exempt a single transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with

the general purposes of the Act. Under section 6(c), the SEC may exempt a series of transactions from any provision of the Act or any rule or regulation thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Thus, applicants request relief under sections 6(c) and 17(b) because they wish to engage in a series of transactions rather than a single transaction.

3. The Investing Funds will retain their ability to invest their cash balances directly into money market instruments if they believe they can obtain a higher return. Each of the Money Market Funds has the right to discontinue selling shares to any of the Investing Funds if its board of trustees determines that such sales would adversely affect the portfolio management and operations of such Money Market Fund. Therefore, applicants believe that the proposal satisfies the standards for relief.

4. Section 17(d) and rule 17d–1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Investing Fund, Janus Capital, and each of the Money Market Funds could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d)(1) and rule 17d–1.

5. Under rule 17d–1, the SEC may permit a proposed joint transaction if participation by a registered investment company is consistent with the provisions, policies, and purposes of the Act, and not on a basis different from or less advantageous than that of the other participants. Applicants believe that the proposal satisfies these standards.

6. Section 12(d)(1), as noted above, sets certain limits on an investment company's ability to invest in the shares of another company. The perceived abuses section 12(d)(1) sought to address include undue influence by an acquiring fund over the management of an acquired fund, layering of fees, and complex structures. Applicants believe that none of these concerns are presented by the proposed transactions and that the proposed transactions meet the section 6(c) standards for relief.

## Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, or distribution fee under a plan adopted in accordance with rule 12b–1.

2. Applicants will cause Janus Capital and its affiliated persons to remit to the respective Investing Fund, or waive, an amount equal to the Reduction Amount. Any of these fees remitted or waived will not be subject to recoupment by Janus Capital or its affiliated persons at a later date.

3. For the purpose of determining any amount to be waived and/or expenses to be borne to comply with any Expense Waiver, the adjusted fees for an Investing Fund (gross fees minus Expense Waiver) will be calculated without reference to the amounts waived or remitted pursuant to condition 2. Adjusted fees then will be reduced by the amount waived pursuant to condition 2. If the amount waived pursuant to condition 2 exceeds adjusted fees, Janus Capital also will reimburse the Investing Fund in an amount equal to such excess.

4. Each of the Investing Funds will be permitted to invest uninvested cash in, and hold shares of, a Money Market Fund only to the extent that the Investing Fund's aggregate investment in such Money Market Fund does not exceed the greater of 5% of the Investing Fund's total net assets or $2.5 million.

5. Each Investing Fund will vote its shares of each Money Market Fund in the same proportion as the votes of all other shareholders of such Money Market Funds entitled to vote on the matter.

6. As shareholders of a Money Market Fund, the Investing Funds will receive dividends and bear their proportionate share of expenses on the same basis as other shareholders of such Money Market Funds. A separate account will be established in the shareholder records of each of the Money Market Funds for each of the Investing Funds.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11519 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

---

**[Rel. No. IC–21040; File No. 812–9338]**

## The Mutual Life Insurance Company of New York, et al.

May 4, 1995

**AGENCY:** Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

**APPLICANTS:** The Mutual Life Insurance Company of New York (''Mutual of New York''), MONY Life Insurance Company of America (''MONY'', together with Mutual of New York, the ''Companies''), MONY Variable Account L (''Account L''), MONY America Variable Account L (''MONY Account L''), any other separate account established by the Companies in the future to support flexible premium, single premium, or scheduled premium variable life insurance polices (the ''Other Accounts,'' collectively, with Account L and MONY Account L, the ''Accounts'') and MONY Securities Corp.

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from Section 27(c)(2) of the 1940 Act and Rules 6e–2(c)(4)(v), 6e–3(T)(c)(4)(v), 6e–2(a)(2), and 6e–2(b)(15) thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit them to deduct from premiums received under certain variable life insurance policies (the ''Contracts'') issued by the Accounts and the Companies a charge that is reasonable in relation to the Companies' increased federal income tax burden resulting from the Companies' receipt of such premiums in connection with the Contracts. Applicants also seek an order to permit any of the Accounts to derive its assets from both flexible and scheduled premium variable life insurance policies and nevertheless to qualify as a variable life insurance separate account, with respect to single premium or scheduled premium life insurance policies, for the purposes of Rule 6e–2.

**FILING DATE:** The application was filed on November 23, 1994.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 30, 1995 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Edward P. Bank, Vice President and Deputy General Counsel, The Mutual Life Insurance Company of New York, 1740 Broadway, New York, New York, 10019.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Whisler, Senior Attorney, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

## Applicants' Representations

1. Mutual of New York, a mutual life insurance company organized under the laws of New York in 1842, is the depositor of Account L for purposes of the 1940 Act. MONY, a stock life insurance company organized under Arizona law in 1969, is the depositor of MONY Account L for purposes of the 1940 Act. Mutual of New York is the issuer of Contracts which permit allocation of premiums to Account L and MONY is the issuer of Contracts which permit allocation of premiums to MONY Account L. Account L and MONY Account L have twelve subaccounts, not all of which are available under the Contracts. Each subaccount invests solely in a corresponding portfolio of either the MONY Series Fund, Inc., or the Enterprise Accumulation Trust (collectively, the ''Funds''). Each of the Funds is an open-end diversified management investment company registered under the 1940 Act. The Companies may elect to crate additional subaccounts in the future. The Accounts are, and will be registered with the Commission as unit investment trusts.

2. MONY Securities Corp., a wholly owned subsidiary of Mutual of New York, is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. MONY Securities Corp. will be the principal underwriter of the Contracts and may serve in the future as the principal underwriter for Contracts issued by the Other Accounts.

3. The Contracts are flexible premium variable life insurance policies. The Contracts issued by Account L and MONY Account L will be, and the Contracts issued by the Other Accounts are expected to be, issued in reliance on Rule 6e–3(T) under the 1940 Act. Applicants state that the Companies will deduct 1.25% of each premium payment to cover the Companies' estimated cost for the federal income tax treatment of deferred acquisition costs.

4. In the Omnibus Budget Reconciliation Act of 1990, Congress amended the Internal Revenue Code of 1986 (the ''Code'') by, among other things, enacting Section 848 thereof. Section 848 changed how a life insurance company must compute its itemized deductions from gross income for federal income tax purposes. Section 848 requires an insurance company to capitalize and amortize over a period of ten years part of the company's general expenses for the current year. Under prior law, these general expenses were deductible in full from the current year's gross income.

5. The amount of deductions that must be capitalized and amortized over ten years rather than deducted in the year incurred is based solely upon ''net premiums'' received in connection with certain types of insurance contracts. Section 848 of the Code defines ''net premium'' for a type of contract as gross premiums received by the insurance company on the contracts minus return premiums and premiums paid by the insurance company for reinsurance of its obligations under such contracts. Applicants state that the effect of Section 848 is to accelerate the realization of income from insurance contracts covered by that Section, and, accordingly, the payment of taxes on the income generated by those contracts.

6. The amount of general deductions that must be capitalized depends upon the type of contract to which the premiums received relate and varies according to a schedule set forth in Section 848. Applicants state that the Contracts are ''specified insurance contracts'' that fall into the category of life insurance contracts, and under Section 848, 7.7% of the year's net premiums received must be capitalized and amortized.

7. Applicants state that the increased tax burden on the Companies resulting from Section 848 may be quantified as follows: For each $10,000 of net premiums received by the Companies under the Contracts in a given year, the Companies' general deductions are reduced by $731.50 or (a) $770 (7.7% of $10,000) minus (b) $38.50 (one-half year's portion of the ten year amortization). This leaves $731.50 ($770 minus $38.50) subject to taxation at the corporate tax rate of 35%. This results in an increase in tax for the current year of $256.03 (.35 x $731.50). This increase will be partially offset by deductions that will be allowed during the next ten years as a result of amortizing the remainder of the $770 ($77 in each of the following nine years and $38.50 in the tenth year).

8. In the business judgment of the Companies, a discount rate of 8% is appropriate for use in calculating the present value of the Companies' future tax deductions resulting from the amortization described above. Applicants state that the Companies seek an after tax rate of return on the investment of their capital of 8%. To the extent that capital must be used by the Companies to meet their increased federal tax burden under Section 848 resulting from the receipt of premiums, such capital is not available to the Companies for investment. Thus, Applicants argue, the cost of capital used to satisfy the Companies' increased federal income tax burden under Section 848 is, in essence, the Companies' after tax rate of return on capital; and, accordingly, the rate of return on capital is appropriate for use in this present value calculation.

9. The Companies recognize that a charge of 1.25%, or, a charge at any level, could conceivably exceed the tax burden if, in the future, the Companies' corporate tax rate or targeted after tax rate of return were reduced. The Companies submit that, while it is difficult to predict, with certainty, whether or the extent to which the rate will be reduced, a measure of comfort is provided that the calculation of the Companies' increased tax burden attributable to the receipt of premiums will continue to be reasonable over time, even if the corporate tax or the targeted after tax rate of return applicable to the Companies is reduced. The Contracts provide that the Companies can decrease the charge under such circumstances. The Companies undertake to monitor the tax burden imposed on them and to reduce the charge to the extent of any significant decrease in the tax burden.

10. In determining the after tax rate of return used in arriving at the 8% discount rate, Applicants state that the Companies considered a number of factors, including: market interest rates; the Companies' anticipated long term growth rate; the risk level for this type of business; inflation; and available information about the rates of return obtained by other life insurance companies. The Companies represent that such factors are appropriate factors to consider in determining the Companies' cost of capital. Applicants state that the Companies first project their future growth rate based on the sales projections, the current interest rates, the inflation rate, and the amount

of capital that the Companies can provide to support such growth. The Companies then use the anticipated growth rate and the other factors enumerated above to set a rate of return on capital that equals or exceeds this rate of growth. Of these other factors, market interest rates, the acceptable risk level, the surplus level required by ratings agencies, and the inflation rate receive significantly more weight than information about the rates of return obtained by other companies. Applicants state that the Companies seek to maintain a ratio of capital to assets that is established based on the Companies' judgment of the risks represented by various components of the Companies' assets and liabilities. Applicants state that maintaining the ratio of capital to assets is critical to offering competitively priced products and, as to the Companies, to maintaining a competitive rating from various rating agencies. Consequently, Applicants state that the Companies' capital should grow at least at the same rate as do the Companies' assets.

11. Applying the 8% discount rate, and assuming a 35% corporate income tax rate, the present value of the tax effect of the increased deductions allowable in the following ten years amounts to a federal income tax savings of $174.60. Thus, the present value of the increased tax burden resulting from the effect of Section 848 on each $10,000 of net premiums received under the Contracts is $81.43, *i.e.*, $256.03 minus $174.60.

12. State premium taxes are deductible in computing federal income taxes. Thus, the Companies do not incur incremental federal income tax when they pass on state premium taxes to owners of the Contracts. Conversely, federal income taxes are not deductible in computing the Companies' federal income taxes. To compensate the Companies fully for the impact of Section 848, therefore, it would be necessary to allow them to impose an additional charge that would make them whole not only for the $81.43 additional federal income tax burden attributable to Section 848 but also for the federal income tax on the additional $81.43 itself. This federal income tax can be determined by dividing $81.43 by the complement of the 35% federal corporate income tax rate, *i.e.*, 65%, resulting in an additional charge of $125.28 for each $10,000 of net premiums, or 1.25%.

13. Based on prior experience, the Companies expect that all of their current and future deductions will be fully taken. It is the Companies' judgment that a charge of 1.25% would reimburse them for the impact of Section 848 on the Companies' federal income tax liabilities. Applicants represent that the charge to be deducted by the Companies pursuant to the relief requested is reasonably related to the increased federal income tax burden under Section 848, taking into account the benefit to the Companies' of the amortization permitted by Section 848, and the use by the Companies' of a discount rate of 8% in computing the future deductions resulting from such amortization, such rate being the equivalent of the Companies' cost of capital.

14. While the application states that the Companies believe that a charge of 1.25% of premium payments would reimburse them for the impact of Section 848 (as currently written) on the Companies' federal income tax liabilities, the application also states, however, that the Companies believe that they will have to increase this charge if any future change in, or interpretation of Section 848, or any successor provision, results in an increased federal income tax burden due to the receipt of premiums. Such an increase could result from a change in the corporate federal income tax rate, a change in the 7.7% figure, or a change in the amortization period.

**Applicants' Legal Analysis**

1. Applicants request an order of the Commission pursuant to Section 6(c) exempting them from the provisions of Section 27(c)(2) of the 1940 Act and Rules 6e–2(c)(4)(v) and 6e–3(T)(c)(4)(v) thereunder to the extent necessary to permit deductions to be made from premium payments received in connection with the Contracts. The deductions would be in an amount that is reasonable in relation to the Companies' increased federal income tax burden related to the receipt of such premiums. Applicants further request an exemption from Rule 6e–3(T)(c)(4)(v) of the 1940 Act to permit the proposed deductions to be treated as other than ''sales load'' for the purposes of Section 27 of the 1940 Act and the exemptions from various provisions of that Section found in Rule 6e–3(T)(b)(13).

2. Section 6(c) of the 1940 Act provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act.

**Section 27(c)(2) and Rules 6e–3(T)(c)(4) and 6e–2(c)(4)(v)**

1. Section 27(c)(2) of the 1940 Act prohibits the sale of periodic payment plan certificates unless the proceeds of all payments (except such amounts as are deducted for sales load) are held under an indenture or agreement containing in substance the provisions required by Sections 26(a)(2) and 26(a)(3) of the 1940 Act. Certain provisions of Rule 6e–3(T) provide a range of exemptive relief for the offering of flexible premium variable life insurance policies such as the Contracts. Rule 6e–3(T)(b)(13)(iii) provides, subject to certain conditions, exemptions from Section 27(c)(2) that include permitting a payment of certain administrative fees and expenses, the deduction of a charge for certain mortality and expense risks, and the ''deduction of premium taxes imposed by any State or other governmental entity.''

2. Rule 6e–2(c)(4)(v) defines ''sales load'' charged on any payment as the excess of the payment over certain specified charges and adjustments, including ''a deduction approximately equal to state premium taxes.'' Rule 6e–3(T)(c)(4)(v) defines ''sales load'' charged during a contract period as the excess of any payments made during the period over the sum of certain specified charges and adjustments, including ''a deduction for and approximately equal to state premium taxes.''

3. Applicants submit that the deduction for federal income tax charges, proposed to be deducted in connection with the Contracts, is akin to a state premium tax charge in that it is an appropriate charge related to the Companies' tax burden attributable to premiums received. Thus, Applicants submit that the proposed deduction be treated as other than sales load, as is a state premium tax charge, for purposes of the 1940 Act.

4. Applicants argue that the requested exemptions from Rules 6e–2(c)(4) and 6e–3(T)(c)(4) are necessary in connection with Applicants' reliance on certain provisions of Rules 6e–2(b)(13) and 6e–3(T)(b)(13), and particularly on subparagraphs (b)(13)(i) of the Rules, which provide exemptions from Sections 27(a)(1) and 27(h)(1) of the 1940 Act. Issuers and their affiliates may only rely on Rules 6e–2(b)(13)(i) or 6e–3(T)(b)(13)(i) if they meet the respective Rule's alternative limitations on sales load as defined in Rules 6e–2(c)(4) or Rule 6e–3(T)(c)(4). Applicants state that, depending upon the load structure of a particular Contract, these

alternative limitations may not be met if the deduction for the increase in an issuer's federal tax burden is included in sales load. Although a deduction for an insurance company's increased federal tax burden does not fall squarely within any of the specified charges or adjustments which are excluded from the definition of ''sales load'' in Rules 6e–2(c)(4) and 6e–3(T)(c)(4), Applicants state that they have found no public policy reason for including these deductions in ''sales load''.

5. The public policy that underlies Rules 6e–2(b)(13)(i) and 6e–3(T)(b)(13)(i), like that which underlies Sections 27(a)(1) and 27(h)(1) of the 1940 Act, is to prevent excessive sales loads from being charged in connection with the sale of periodic payment plan certificates. Applicants submit that the treatment of a federal income tax charge attributable to premium payments as sales load would not in any way further this legislative purpose because such a deduction has no relation to the payment of sales commissions or other distribution expenses. Applicants state that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of ''sales load'' in Rules 6e–2(c)(4) and 6e–3(T)(c)(4).

6. Applicants assert that the source for the definition of ''sales load'' found in the Rules supports this analysis. Applicants state that the Commission's intent in adopting such provisions was to tailor the general terms of Section 2(a)(35) of the 1940 Act to variable life insurance contracts. Just as the percentage limits of Sections 27(a)(1) and 27(h)(1) depend on the definition of ''sales load'' in Section 2(a)(35) for their efficacy, the percentage limits in Rules 6e–2(b)(13)(i) and 6e–3(T)(b)(13)(i) depend on Rules 6e–2(c)(4) and 6e–3(T)(c)(4), respectively, which do not depart, in principle, from Section 2(a)(35).

7. Section 2(a)(35) excludes deductions from premiums for ''issue taxes'' from the definition of ''sales load'' under the 1940 Act. Applicants submit that this suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of ''sales load'' in Rules 6e–2 and 6e–3(T) deductions made to pay an insurance company's costs attributable to its tax obligations. Section 2(a)(35) also excludes administrative expenses or fees that are ''not properly chargeable to sales or promotional activities.'' Applicants argue that this suggests that the only deductions intended to fall within the definition of ''sales load'' are those that are properly chargeable to such activities. Because the proposed deductions will be used to compensate the Companies for their increased federal income tax burden attributable to the receipt of premiums, and are not properly chargeable to sales or promotional activities, this language in Section 2(a)(35) is another indication that not treating such deductions as ''sales load'' is consistent with the policies of the 1940 Act.

8. Applicants assert that the terms of the relief requested with respect to Contracts to be issued through the Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, the Companies would have to request and obtain exemptive relief for each Contract to be issued through one of the Other Accounts. Applicants state that such additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this request for exemptive relief.

9. Applicants assert that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable life insurance market by eliminating the end for the Companies to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. The delay and expense involved in having to seek repeated exemptive relief would impair the ability of the Companies to take advantage fully of business opportunities as those opportunities arise. Additionally, Applicants state that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If the Companies were required to seek exemptive relief repeatedly with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby and might be disadvantaged as a result of increased overhead expenses for the Companies.

**Conditions for Relief**

1. Applicants represent that the Companies will monitor the reasonableness of the charge to be deducted by the Companies pursuant to the requested exemptive relief.

2. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will: (i) Disclose the charge; (ii) explain the purpose of the charge; and (iii) state that the charge is reasonable in relation to the Companies' increased federal income tax burden under Section 848 resulting from the receipt of premiums.

3. Applicants represent that the registration statement for each Contract under which the charge referenced in paragraph one of this section is deducted will contain as an exhibit an actuarial opinion as to: (i) The reasonableness of the charge in relation to the Companies' increased federal income tax burden under Section 848 resulting from the receipt of premiums; (ii) the reasonableness of the after tax rate of return that is used in calculating such charge; and (iii) the appropriateness of the factors taken into account by the Companies in determining the after tax rate of return.

**Rules 6e–2(a)(2) and 6e–2(b)(15)**

1. Applicants also request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Rules 6e–2(a)(2) and 6e–2(b)(15) to the extent necessary to permit the Accounts to issue flexible premium variable life insurance policies under Rule 6e–3(T) without the Accounts losing the ability to rely on Rule 6e–2 with regard to single premium and scheduled premium variable life insurance policies issued by the Accounts.

2. Rules 6e–2(a)(2), in effect, requires that separate accounts such as the Accounts derive their assets, other than advances by the life insurance company, ''solely from the sale of variable life insurance contracts'' as that term is defined in the Rule. Rule 6e–2 defines a variable life insurance contract differently than Rule 6e–3(T) defines a flexible premium life insurance contract. Thus, Applicants note, a separate account that funds single premiums and scheduled premium variable life insurance contracts and flexible premium life insurance contracts would not be deemed to have its assets derived solely from the sale of ''variable life insurance contracts.'' Additionally, Applicants note that the exemptions afforded by Rules 6e–2(b)(15) are available only with respect to the ''variable life insurance separate accounts'' contemplated by Rule 6e–2, i.e., separate accounts that fund only scheduled premium variable life insurance contracts.

3. Applicants argue that no policy reason would justify prohibiting the use of the same Account as a funding vehicle for Contracts relying on Rule 6e–2 and Rule 6e–3(T). Applicants represent that the interests of flexible payment variable life policyholders and scheduled payment variable life policyholders and the regulatory frameworks of Rules 6e–2 and 6e–3(T) are sufficiently parallel that the use of

the same separate account to fund both types of policies should not prejudice the owners of any of the Contracts. Applicants also argue that the increased pooling, diversification, and economies of scale realized from the use of an Account should benefit the owners of the Contracts.

4. Applicants believe that the terms of the relief with respect to Contracts funded by Account L, MONY Account L or the Other Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants state that they would have to request and obtain exemptive relief in connection with the Contracts to the extent required. Any such additional requests for exemption, Applicants submit, would present no issues under the 1940 Act not already addressed in the application.

5. Applicants submit that the requested relief from Rules 6e–2(a)(2) and 6e–2(b)(15) is appropriate in the public interest because the relief will promote competitiveness in the variable life insurance market by eliminating the need for the Companies to file redundant exemptive applications, thereby reducing the Companies' administrative expenses and maximizing the efficient use of resources. Applicants argue that the delay and expense involved in having to repeatedly seek exemptive relief would impair the ability of the Companies to take advantage effectively of business opportunities as those opportunities arise. Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Thus, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

## Conclusion

Applicants submit that, for the reasons and upon the facts set forth above, the requested exemptions from Section 27(c)(2) of the 1940 Act and Rules 6e–2(c)(4)(v), 6e–3(T)(c)(4)(v), 6e–2(a)(2) and 6e–2(b)(15) thereunder to: (a) permit the Companies to deduct 1.25% of premium payments under the Contracts; and (b) to permit any of the Accounts to derive its assets from flexible premium, single premium and scheduled premium variable life insurance policies, and to nevertheless qualify as a variable life insurance separate account for the purposes of Rule 6e–2, meet the standards set forth in Section 6(c) of the 1940 Act. In this regard, Applicants assert that granting the relief requested in the application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–11513 Filed 5–9–95; 8:45 am]

BILLING CODE 8010–01–M

---

# SOCIAL SECURITY ADMINISTRATION

## 1994–95 Advisory Council on Social Security; Meeting

**AGENCY:** Social Security Administration.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994–95 Advisory Council on Social Security (the Council).

**DATES:** Friday, May 19, 1995, 9:00 a.m. to 5:00 p.m. and Saturday, May 20, 1995, 9:00 a.m. to 3:00 p.m.

**ADDRESSES:** National Rural Electric Cooperative Association, 1800 Massachusetts Avenue, N.W., Washington, D.C. 20036, (202) 857–9500.

**FOR FURTHER INFORMATION CONTACT:** By mail—Dan Wartonick, 1994–95 Advisory Council on Social Security, Suite 705, 1825 Connecticut Avenue, NW, Washington, DC 20009; By telephone—(202) 482–7117; By telefax—(202) 482–7123.

**SUPPLEMENTARY INFORMATION:**

## I. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare program and impacts on the Medicaid program, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council met previously on June 24–25 (59 FR 30367), July 29, 1994 (59 FR 35942), September 29–30 (59 FR 47146), October 21–22 (59 FR 51451), November 18–19 ( 59 FR 55272), January 27 (60 FR 3416), February 10–11 (60 FR 5433), March 8–9 (60 FR 10091), March 10–11 (60 FR 10090) and April 21–22 (60 FR 18419).

## II. Agenda

The following topics will be presented and discussed:

- Options for ensuring the long-term financing of the Social Security program;
- Changes to Social Security benefits to ensure relative equity and adequacy; and
- Relative roles of the public and private sectors in providing retirement income.

The meeting is open to the public to the extent that space is available. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security—Disability Insurance; 93.803, Social Security—Retirement Insurance; 93.805, Social Security—Survivors Insurance.)

Dated: May 2, 1995.

**David C. Lindeman,**

*Executive Director, 1994–95 Advisory Council on Social Security.*

[FR Doc. 95–11428 Filed 5–9–95; 8:45 am]

BILLING CODE 4190–29–P

## DEPARTMENT OF STATE

**[Public Notice 2202]**

### United States International Telecommunications Advisory Committee (ITAC); Notice of Meeting

The Department of State announces that a meeting of the United States International Telecommunications Advisory Committee (ITAC) will be held May 17, 1995, 1:30–4:00 p.m., in the East Auditorium of the Department of State, 2201 ''C'' Street, N.W., Washington, D.C. The Department regrets the short notice of this meeting, which has been caused by an unanticipated invitation to participate in an important international meeting and the need to obtain timely recommendations from ITAC.

The purpose of ITAC is to advise the Department on policy, technical and operational matters and to provide strategic planning recommendations, with respect to international telecommunications and information issues. The agenda of this meeting is to consider Resolution 15—Review of the Rights and Obligations of all Members of the Sectors of the Union—of the recent ITU Plenipotentiary Conference (Kyoto, 1994) and any related matters. In particular the Department is seeking the recommendations of ITAC regarding U.S. participation in the first meeting of the Review Committee foreseen by Resolution 15, which will be held at ITU Headquarters in Geneva, May 29–31. The Committee will review the rights and obligations of ITU members (the ''small-m'' members, or non-governmental participants in ITU activities) with the aim of enhancing their rights, in recognition of their contribution to the work of the ITU and in such a way that their active and effective participation is promoted. Questions regarding the agenda or ITAC in general may be directed to Richard Shrum, Department of State (202–647–0050).

Members of the general public may attend the meetings and join in the discussions, subject to the instructions of the chair and seating availability. In this regard, entry to the building is controlled. All persons planning to attend should advise the Department by leaving a message on 202–647–0201, no later than two days before the meeting. Enter through the main lobby on C Street. A picture ID will be required for admittance.

Dated: May 3, 1995.

**Richard E. Shrum,**

*ITAC Executive Director.*

[FR Doc. 95–11468 Filed 5–9–95; 8:45 am]

BILLING CODE 4710–45–M

---

## Bureau of Oceans and International Environmental and Scientific Affairs

**[Public Notice 2199]**

### Certifications Pursuant to Section 609 of Public Law 101–162

**SUMMARY:** On April 28, 1995, the Department of State certified, pursuant to Section 609 of Public Law 101–162, that 9 countries with commercial shrimp trawl fisheries in the Gulf of Mexico, Caribbean and Western Atlantic Ocean (Belize, Brazil, Columbia, Guyana, Honduras, Mexico, Nicaragua, Panama, and Venezuela) have adopted programs to reduce the incidental capture of sea turtles in such fisheries comparable to the program in effect in the United States. The Department certified that the fishing environment in two other countries (Costa Rica and Guatemala) does not pose a threat of the incidental taking of sea turtles protected under Public Law 101–162. The Department was unable to issue certifications on April 28 for Suriname, Trinidad and Tobago, and French Guiana and, as a result, shrimp imports from these countries were prohibited effective May 1, 1995 pursuant to Public Law 101–162.

**EFFECTIVE DATE:** May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** Hollis Summers, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–3940.

**SUPPLEMENTARY INFORMATION:** Section 609 of Public Law 101–162 prohibits imports of shrimp from certain nations unless the President certifies to the Congress by May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States; or (2) that the fishing environment in the harvesting nations does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on February 18, 1993 (58 FR 9015).

The countries subject to the provisions of Public Law 101–162 include Belize, Brazil, Columbia, Costa Rica, French Guiana (EC), Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Suriname, Trinidad and Tbago, and Venezuela. On April 28, 1995, the Department of State certified that 11 of the 14 affected countries have met, for the current year, the requirements of the law. The countries that did not receive a certification at that time were Trinidad and Tabago, Suriname, and French Guiana. As a result, shrimp imports from Trinidad and Tabago were prohibited pursuant to Public Law 101–162 effective May 1, 1995. The ban on shrimp imports from Suriname (in effect since May 1, 1993) and French Guiana (in effect since May 1, 1992) remain in place.

The countries that received a certification on April 28, 1995, were Belize, Brazil, Columbia, Costa Rica, Guatemala, Guyana, Mexico, Honduras, Nicaragua, Panama, and Venezuela; with Trinidad and Tobago certified on May 9, 1994. Of these, the Department certified that the fishing environment in Costa Rica and Guatemala does not pose a threat of the incidental taking of sea turtles protected by Public Law 101–162. (In both these countries, the commercial shrimp trawl fleet operates exclusively in the Pacific Ocean with no activity on the Caribbean side.) The Department certified that the other ten countries have adopted a program to reduce the incidental capture of sea turtles in the commercial shrimp trawl fishery comparable to the U.S. program.

In reviewing information for the purpose of making the certifications, the Department looked at three principal elements of each country's program: The legal and/or regulatory framework establishing the TED requirement for all commercial shrimp trawl vessels, except those specifically exempt under the Department's guidelines; (2) the implementation of the requirement and the extent to which TEDs are in use on all such vessels; and (3) the efforts of each country to monitor and enforce the TED requirement to ensure compliance. Because each country that received a certification this year has established and is implementing the legal requirement to use TEDs, the Department will place particular emphasis in making future certifications on the third element, monitoring and enforcement of the TED requirement.

Dated: April 28, 1995.

**R. Tucker Scully,**

*Acting Deputy Assistant Secretary for Oceans.*

[FR Doc. 95–11450 Filed 5–9–95; 8:45 am]

BILLING CODE 4710–09–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Capacity Council Industry Outreach; Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. APP. I) notice is hereby given of a meeting of the Capacity Council Industry Outreach. The meeting will take place on Thursday, June 8, 1995, at 1 p.m. in Conference Room 600E, 6th floor, Federal Aviation Administration (FAA), 800 Independence Avenue, SW, Washington, DC.

The agenda for the meeting will include a briefing and discussion of the Runway Separation Issues (PRM) Update; Airport Inventory Update; Status of New Runway Construction; AIP/F&E Decision-Making Process Update; Report on the Capacity Technology Subcommittee Recommendations; and GPS Briefing (Surface Movement).

Attendance is open to the interested public but limited to space available. With the approval of either of the Committee Co-Chairpersons members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access to the building to attend the meeting should contact Ms. Paula Lewis, Office of System Capacity and Requirements, FAA/ASC–10, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7378.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 1, 1995.

**Cynthia D. Rich,**

*Associate Administrator For Airports.*

[FR Doc. 95–11485 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–13–M

### Civil Tiltrotor Development Advisory Committee, Economics Subcommittee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Economics Subcommittee that will be held on May 31, 1995 in Philadelphia, PA at the Philadelphia International Airport in the Tour Room located on the Concourse between Terminals C and D.

The meeting will begin at 10:00 a.m. and conclude by 4:00 p.m.

The agenda for the Economics Subcommittee meeting will include the following:

(1) Review and discussion on the draft economics report.

(2) Review of schedule and work plans.

(3) Other business.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202–267–9451 by May 24. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton at least seven working days prior to the meeting.

Issued in Washington, DC, May 3, 1995.

**Richard A. Weiss,**

*Designated Federal Official, Civil Tiltrotor Development Advisory Committee.*

[FR Doc. 95–11486 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–13–M

### Civil Tiltrotor Development Advisory Committee; Environment and Safety Subcommittee

Pursuant to Section 10(A) (2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Environment & Safety Subcommittee will be on June 6–7, 1995 at the headquarters of the Helicopter Association International located at 1635 Prince Street, Alexandria, Virginia. This site is within easy walking distance of the King Street Metro Station. The meeting will begin at 8:00 a.m. on June 6 and conclude by 5:00 p.m. on June 7.

The agenda for the Environment & Safety Subcommittee meeting will include the following:

(1) Discussion of draft Subcommittee report on Safety Issues.

(2) Discussion of draft Subcommittee report on Environmental Issues.

(3) Review Subcommittee Work Plan/Schedule.

All persons who plan to attend the meeting must notify Mrs. Karen Braxton at 202–267–9451 by June 1, 1995.

Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Mrs. Braxton at least seven days prior to the meeting.

Issues in Washington, D.C., May 3, 1995.

**Richard A. Weiss,**

*Designated Federal Official Civil Tiltrotor Development Advisory Committee.*

[FR Doc. 95–11487 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–13–M

### Civil Tiltrotor Development Advisory Committee, Infrastructure Subcommittee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) Infrastructure Subcommittee that will be held on June 5, 1995 at the headquarters of the Helicopter Association International located at 1635 Prince Street, Alexandria, Virginia. This site is within easy walking distance of the King Street Metro Station. The meeting will begin at 10:00 a.m. and conclude by 5:00 p.m.

The agenda for the Infrastructure Subcommittee meeting will include the following:

(1) Review and discussion of the Subcommittee draft report.

(2) Review the Infrastructure Subcommittee work plans/schedule.

Persons who plan to attend the meeting should notify Ms. Karen Braxton on 202–267–9451 by May 30. Attendance is open to the interested public, but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting.

Members of the public may provide a written statement to the Subcommittee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Karen Braxton at least seven days prior to the meeting.

Issued in Washington, DC, May 3, 1995.

**Ricahrd A. Weiss,**

*Designated Federal Official, Civil Tiltrotor Development Advisory Committee.*

[FR Doc. 95–11488 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–13–M

## Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In March 1995, there were four applications and five amendments approved.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of 49 U.S.C. 40117 (Pub. L. 103–272) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

### PFC Applications Approved

*Public Agency:* City of Bangor, Maine.

*Application Number:* 95–01–C–00–BGR.

*Application Type:* Impose and use PFC revenue.

*PFC Level:* $3.00.

*Total Approved Net Use PFC Revenue:* $8,742,415.

*Charge Effective Date:* June 1, 1995.

*Estimated Charge Expiration Date:* May 1, 2005.

*Class of Air Carriers Not Required to Collect PFC's:* None.

*Brief Description of Project Approved for Collection and Use:* Reconstruct domestic terminal ramp, reconstruct international ramps (north and south), reconstruct ramp movement areas, and reconstruct and expand commuter apron area.

*Decision Date:* March 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Priscilla Soldan, New England Region Airports Division, (617) 238–7614.

*Public Agency:* Clark County Department of Aviation (Clark County), Las Vegas, Nevada.

*Application Number:* 94–04–C–00–LAS.

*Application Type:* Impose and use PFC revenue.

*PFC Level:* $3.00.

*Total Approved Net Use PFC Revenue:* $510,808,093.

*Estimated Charge Effective Date:* February 1, 2016.

*Estimated Charge Expiration Date:* November 1, 2024.

*Class of Air Carriers Not Required to Collect PFC's:* Carriers who exclusively file FAA Form 1800–31 and enplane less than 2,500 passengers annually at McCarran International Airport (LAS).

*Determination:* Approved. Based on information submitted in Clark County's application, the FAA has determined the proposed class accounts for less than 1 percent of LAS's total annual enplanements.

*Brief Description of Projects Approved for Collection and Use:* Ticketing and baggage handling improvement, Concourse D construction, phase I, Automated transit system, On airport roadway modification, Runway 1L–19R upgrade.

*Brief Description of Projects Approved for Use:* Runway 7R–25L extension, Runway 1L–19R air carrier upgrade—design, Charter/international terminal apron expansion, Land acquisition—portions of Park 2000, Land acquisition—runway 19R protection zone, Land acquisition—Swenson Street, airport-related ground transportation.

*Decision Date:* March 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** Joseph Rodriguez, San Francisco Airports District Office, (415) 876–2805.

*Public Agency:* County of Kern, Bakersfield, California.

*Application Number:* 95–01–C–00–BFL.

*Application Type:* Impose and use PFC revenue.

*PFC Level:* $3.00.

*Total Approved Net Use PFC Revenue:* $888,700.

*Charge Effective Date:* June 1, 1995.

*Estimated Charge Expiration Date:* January 1, 2000.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:* Acquire land—Airport Surveillance Radar critical area, Overlay runway 12L/30R, Overlay taxiway Alpha, Stabilize shoulders, runway 12L/30R, Renovate airfield signage, Remove obstruction—runway 12L obstacle free zone, Acquire land—runway 12L runway protection zone, Purchase American with Disabilities Act boarding device.

*Brief Description of Project Approved for Collection Only:* Construct aircraft rescue and firefighting station.

*Decision Date:* March 30, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Milligan, Western Pacific Region Airports Division, (310) 297–1029.

*Public Agency:* San Luis Obispo County (County), California.

*Application Number:* 95–03–C–00–SBP.

*Application Type:* Impose and use PFC revenue.

*PFC Level:* $3.00.

*Total Approved Net PFC Revenue:* $671,439.

*Charge Effective Date:* June 1, 1995.

*Estimated Charge Expiration Date:* May 1, 1997.

*Class of Air Carriers Not Required to Collect PFC'S:* Unscheduled Part 135 air taxis.

*Determination:* Approved. Based on information submitted in the County's application, the FAA has determined that the proposed class accounts for less than 1 percent of San Luis Obispo County Airport—McChesney Field's total annual enplanements.

*Brief Description of Project Approved for Collection and Use:* Airport development—runway overlay.

*Brief Description of Project Approved, in Part, for Collection and Use:* Airport development—holding bays, lighting, and equipment.

*Determination:* Approved in part. The approved amount has been reduced from that requested. The County states that the PFC revenue is intended to provide the local matching share for the Airport Improvement Program grants associated with this project. Therefore, the PFC approval is limited to the amount necessary to provide the local match.

*Decision Date:* March 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Joseph Rodriguez, San Francisco Airports District Office, (415) 876–2805.

AMENDMENTS TO PFC APPROVALS

| Amendment No. City, State | Amendment approved date | Amended approved net PFC revenue | Original approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 91–01–C–04–LAS Las Vegas, NV | 03/15/95 | $1,074,430,407 | $944,028,500 | 09/01/14 | 02/01/16 |
| 93–01–C–02–CLM Port Angeles, WA | 03/17/95 | 121,524 | 116,504 | 04/01/95 | 05/01/95 |
| 92–01–C–01–COS Colorado Springs, CO | 03/17/95 | 9,306,557 | 5,622,000 | 02/01/96 | 08/01/96 |
| 93–01–C–01–MFR Medford, OR | 03/22/95 | 882,999 | 1,066,142 | 11/01/95 | 11/01/95 |
| 93–01–C–91–ORD Chicago, IL | 03/28/95 | 500,418,285 | 504,489,228 | 10/01/99 | 10/01/99 |

Issued in Washington, D.C. on May 3, 1995.

**Donna Taylor,**

*Manager, Passenger Facility Charge Branch.*

[FR Doc. 95–11489 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–13–M

## National Highway Traffic Safety Administration

**[Docket No. 95–18; Notice 2]**

## Decision That Nonconforming 1991 Yamaha FJ1200 (4CR) Motorcycles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that nonconforming 1991 Yamaha FJ1200 (4CR) motorcycles are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1991 Yamaha FJ1200 (4CR) motorcycles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1991 Yamaha FJ1200 (4CR)), and they are capable of being readily altered to conform to the standards.

**DATES:** This decision is effective May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to decide whether 1991 Yamaha FJ1200 (4CR) motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on March 16, 1995 (60 FR 14318) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

### Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 113 is the vehicle eligibility number assigned to vehicles admissible under this decision.

### Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that a 1991 Yamaha FJ1200 (4CR) motorcycle not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1991 Yamaha FJ1200 (4CR) motorcycle originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 5, 1995.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 95–11466 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–59–M

**[Docket No. 95–14; Notice 2]**

## Decision That Nonconforming 1985 Suzuki GS850 Motorcycles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of decision by NHTSA that nonconforming 1985 Suzuki GS850 motorcycles are eligible for importation.

**SUMMARY:** This notice announces the decision by NHTSA that 1985 Suzuki GS850 motorcycles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all such standards.

**DATES:** The decision is effective May 10, 1995.

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) (formerly section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II)) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register**

of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then published this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California (''G&K) (Registered Importer No. R–90–007) petitioned NHTSA to decide whether 1985 Suzuki GS850 motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on March 14, 1995 (60 FR 13759) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has decided to grant the petition.

## Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the from HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry VSP–111 is the vehicle eligibility number assigned to vehicles admissible under this determination.

## Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1985 Suzuki GS850 motorcycles are eligible for importation into the United States because they have safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

**Authority:** 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on May 5, 1995.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 95–11467 Filed 5–9–95; 8:45 am]

BILLING CODE 4910–59–M

# Sunshine Act Meetings

**Federal Register**

Vol. 60, No. 90

Wednesday, May 10, 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).

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DATE AND TIME:** May 22, 1995, 2:00 P.M. (Eastern Time).

**PLACE:** Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

**STATUS:** Part of the Meeting will be open to the public and part of the Meeting will be closed.

**MATTERS TO BE CONSIDERED:**

**Open Session**

1. Announcement of Notation Votes.
2. Consideration of Task Force Recommendations on the Relationship With FEPAs.

**Closed Session**

Litigation Authorization: General Counsel Recommendations.

**Note:** Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued May 8, 1995.

**Frances M. Hart;**

*Executive Officer; Executive Secretariat.*

[FR Doc. 95–11704 Filed 5–8–95; 3:31 pm]

BILLING CODE 6750–06–M

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Amendment to Sunshine Act Meeting

**SUMMARY:** Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on May 8, 1995 of the special meeting of the Farm Credit Administration Board (Board) scheduled for May 9, 1995. This notice is to amend the agenda by correcting an item in the open session of that meeting.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The open session of the agenda for May 9, 1995, is corrected as follows:

**Open Session**

*C. New Business*

2. Other

—Reaffirmation of Regulatory Philosophy

Dated: May 5, 1995.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 95–11595 Filed 5–8–95; 9:27 am]

BILLING CODE 6705–01–P

# Corrections

**Federal Register**

Vol. 60, No. 90

Wednesday, May 10, 1995

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.168E]**

### Dwight D. Eisenhower Professional Development Federal Activities Program: Initial Teacher Professional Development Projects. Notice Inviting Applications for New Awards for Fiscal Year 1995

*Correction*

In notice document 95–10636 appearing on page 21396 in the issue of Monday, May 1, 1995 make the following corrections:

1. In the first column, *Purpose of Program:*, in the fourth line,''K-2'' should read ''K-12''.

2. In the same column, *For Applications or Information, Contact*, in the sixth line, ''20208-572'' should read ''20208-5572''; in the seventh line, ''(202)219-106'' should read ''(202)219-2106''; and in the eighth line, ''(202)219-206'' should read ''(202)219-2206''.

BILLING CODE 1505–01–D

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 211

**[Release No. SAB 94]**

### Staff Accounting Bulletin No. 94

*Correction*

In rule document 95–9981 beginning on page 20022 in the issue of Monday, April 24, 1995, make the following corrections:GI111. On page 20022, in the second column, in Footnote 1, paragraph a., in the first line, ''for'' should read ''the''; and in the second line, remove ''of''.

2. On the same page, in the 3rd column, in the 1st full paragraph. in the 14th line, ''has'' should read ''had''.

3. On the same page, in the same column, in Footnote 1, paragraph b., in the third line, ''its'' should read ''it''.

4. On page 20023, in the third line, insert ''a'' after ''for''.

BILLING CODE 1505–01–D

federal register

Wednesday
May 10, 1995

# Part II

# Environmental Protection Agency

**40 CFR Part 82**

**Protection of Stratospheric Ozone: Administrative Changes and Amendment to Transhipment Provision in Final Rule to Phase Out Ozone-Depleting Chemicals; Final Rule and Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[FRL–5199–1]**

**RIN 2060–AF80 and AE70**

## Protection of Stratospheric Ozone: Administrative Changes to Final Rule to Phase Out Ozone-Depleting Chemicals

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

**ACTION:** Final rule.

**SUMMARY:** With this action, EPA amends the current regulation to phase out the production and consumption of most ozone-depleting substances. This action clarifies aspects of the regulation as provided under section 604 and 606 of the Clean Air Act Amendments of 1990 (CAA). To ensure an orderly phaseout of the production and consumption of chlorofluorocarbons (CFCs), carbon tetrachloride, methyl chloroform and hydrobromofluorocarbons in 1996, and of halons after 1994, this action alters the administrative requirements of the regulations so companies may continue to produce for special exempted uses. Today's action also clarifies administrative procedures to improve the efficiency of current reporting requirements and to reduce the burden on the affected companies. These actions continue to ensure compliance with Title VI of the CAA in a manner consistent with the United States' obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer, as amended.

Specifically, EPA changes the requirements for the post-phaseout period for transformation and destruction of ozone-depleting substances; establishes the framework for the post-phaseout production of exempted essential uses; revises the controls for imports of controlled substances that are used or recycled; eases the requirements for exporting substances to Article 5 countries; changes the allowance requirements for exports of ozone-depleting substances; clarifies the requirements for heels remaining in containers that are returning to the U.S.; provides a period of reconciliation in which allowance balances may be adjusted; and simplifies the recordkeeping and reporting requirements.

The changes made in this rule ease the burden on industry, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Sections 604 and 606, while maintaining the environmental benefits of the accelerated phaseout.

**DATES:** This rule is effective on May 10, 1995. Amendments to the requirements specifically addressing 1995 apply to the entire 1995 control period.

**FOR FURTHER INFORMATION CONTACT:** The Stratospheric Ozone Protection Hotline at 1–800–296–1996, or Tom Land, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 401 M Street, SW., Washington, DC 20460 (202) 233–9185.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Background
II. Administrative Changes in the Stratospheric Protection Program
A. Program Requirements for Continued Post-Phaseout Production and Importation after January 1, 1996
1. Post-Phaseout Requirements for Transformation and Destruction of Controlled Substances
2. Post-Phaseout Requirements for Essential-Uses
B. Imports of Used Controlled Substances
C. Program Adjustments and Clarifications to Become Effective in the 1995 Control Period
1. Changes in Requirements for Export to Article 5 Countries
2. Administrative Changes to the Consumption Allowance Requirements for Exports
3. Administrative Changes to Production Allowance Requirements for Exports that are Transformed or Destroyed
4. Treatment of Controlled Substances Remaining in Emptied Containers, i.e. ''Heels''
5. Clarification of the Definition of Transhipment
6. Provision for Account Reconciliation Period through Inter-Pollutant Transfers
7. Additional Clarifications
8. Clarification of Reporting and Recordkeeping Requirements
III. Summary of Supporting Analysis
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Enhancing the Intergovernmental Partnership under Executive Order 12875

## I. Background

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances were promulgated by the Environmental Protection Agency (EPA) in the **Federal Register** on December 10, 1993 (58 FR 65018), and on December 30, 1993 (58 FR 69235). The requirements contained in these rules set out an Allowance Program (the Program) that was described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on November 10, 1994 (59 FR 56275). The preamble to the November 10, 1994 proposed rulemaking describes the history of the Program, the current requirements and the proposed amendments.

The Allowance Program was designed to ensure that the U.S. meets its obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer, as amended, (the Protocol) and to ensure compliance with Title VI of the Clean Air Act Amendments of 1990 (CAA). The Protocol and the CAA require the control and phaseout of production and consumption of ozone-depleting substances. In the Program, companies expend ''allowances'' when they produce or import ozone-depleting substances. With certain restrictions, the allowances can be traded among companies both domestically and internationally (between countries that are Parties to the Protocol). To control production, the Agency allocated baseline production allowances to producers of specific ozone-depleting chemicals. To control consumption, the Agency allocated baseline consumption allowances to producers and importers of specific ozone-depleting chemicals. Allowances for class I substances are currently provided to companies on an annual basis, except for halons whose production was phased out on January 1, 1994. The allowances are assigned to companies according to production and importation during base years.

In the context of the Program, the use of the term consumption may be misleading. It is not the ''use'' of these substances that is controlled through regulation but rather the amount of the substance available for U.S. domestic consumption, defined as production plus imports minus exports of bulk virgin chemicals. Controlled substances produced or imported through the use of allowances prior to 1996 (1994 for halons) can continue to be used by industry and the public after the phaseout.

## II. Administrative Changes in the Stratospheric Protection Program

The administrative changes in today's action modify the current regulation to ensure an orderly phaseout in 1996, so that companies may continue to produce for specified exempted uses permitted under the Protocol and the CAA. In addition, the Agency is seeking to improve the efficiency of the requirements and to reduce the burden on the affected companies while ensuring continued compliance with Title VI of the CAA and the Montreal

Protocol. In light of these objectives, the Agency is promulgating the following administrative changes to improve the Program.

The NPRM published in the **Federal Register** on November 10, 1994, proposed changes to begin on January 1, 1996 for the post-phaseout period and also proposed changes for the 1995 control period.

Under the current regulation, the phaseout of the production and consumption of the class I controlled substances (except Group VI, methyl bromide) will be complete by January 1, 1996. A list of the specific class I ozone-depleting chemicals in each Group can be found in appendices A and F to subpart A. The schedule for the phaseout of hydrochlorofluorocarbons was published in the **Federal Register** on December 10, 1993, and is unchanged in this final rule.

Due to the phaseout, beginning January 1, 1996, production and consumption allowances for all class I controlled substances, except Group VI, methyl bromide, will no longer be used. Despite the discontinuation of such production and consumption allowances for class I controlled substances (except methyl bromide), the Agency envisions that the manufacture of class I controlled substances may continue after January 1, 1996, provided the substances are:

- Either transformed or destroyed,
- Produced for export to Article 5 countries,
- Produced for essential uses as authorized by the Protocol and CAA and consistent with essential-use allowances, or
- Produced with destruction and transformation credits.

In addition, EPA envisions that the import of class I controlled substances (except methyl bromide) may continue after January 1, 1996, without the need for consumption allowances, if the substances are:

- Either transformed or destroyed,
- Previously used (including recycled or reclaimed),
- Imported for essential uses as authorized by the Protocol and CAA and consistent with essential-use allowances,
- Transhipped through the United States to another Party to the Protocol, or
- Imported using destruction and transformation credits.

Through today's final rule the Agency will:

(1) Maintain a category of Article 5 allowances (previously called potential production allowances),

(2) Create a new category of essential-use allowances, and

(3) Create narrow procedures for granting destruction and transformation credits.

EPA received twenty-two comments on the proposed rulemaking published in the **Federal Register** on November 10, 1994, as well as several additional submissions following the close of the comment period. All comments were reviewed and considered. Comments most relevant to today's action are responded to in the preamble and additional responses to comments are available in the Air Docket No. A–92–13.

*A. Program Requirements for Continued Post-Phaseout Production and Importation After January 1, 1996*

1. Post-Phaseout Requirements for Transformation and Destruction of Controlled Substances

The following paragraphs discuss requirements for the destruction and transformation of controlled substances after the January 1, 1996 phaseout date. EPA would like to be informed of new technologies for destruction of controlled substances that have been developed or are being developed since the Parties to the Protocol first approved the current list of destruction technologies. EPA would like to anticipate the future review of new technologies for destruction by the Parties to the Protocol.

*Definition of Emissive Use.* In the preamble of the proposal (59 FR 56278), EPA discussed a definition of ''emissive use'' that the Agency decided was unnecessary for today's action and provided no additional clarity to the regulation.

*a. Production or Importation of Controlled Substances Explicitly for Uses that Result in Transformation or Destruction after January 1, 1996.* In today's action, EPA permits companies to produce or import controlled substances if explicitly produced or imported for uses that will result in transformation or destruction in the United States or in a Party, after January 1, 1996.

In the 1995 control period, controlled substances may continue to be produced explicitly for uses that result in transformation or destruction in the U.S. without the expenditure of allowances, as under the current regulation. Section C.3., ''Administrative Changes to Production Allowance Requirements for Exports that are Transformed or Destroyed,'' of this preamble discusses controlled substances produced in 1995 explicitly for export that results in transformation or destruction.

*Response to Comments:* EPA received one comment that did not entirely support EPA's proposal to permit a company to produce or import after January 1, 1996, if explicitly for transformation or destruction. The commenter objected to maintaining procedures, after January 1, 1996, for companies that produce or import controlled substances explicitly for destruction in the U.S. (59 FR 56278). The commenter questioned the need for production, and especially importation, of controlled substances for destruction in the United States after the 1996 phaseout. This same commenter, however, did support the proposal to permit production and importation, after January 1, 1996, for transformation in the U.S.

EPA is permitting production and importation explicitly for destruction after January 1, 1996, because industry commonly uses carbon tetrachloride and other controlled substances in chemical reactions until they lose their effectiveness and must be destroyed. In many chemical reactions, carbon tetrachloride is used as a catalyst or stabilizer. Once the reaction is complete, the carbon tetrachloride is withdrawn from the chemical being produced and used in the reaction of the next batch. Through these reactions, carbon tetrachloride loses its effectiveness as a catalyst or stabilizer and must eventually be destroyed. Many manufacturing processes rely on the unique characteristics of carbon tetrachloride, and other controlled substances, as catalysts or stabilizers but these chemical eventually need to be destroyed. EPA wishes to allow these manufacturing uses of controlled substances to continue after January 1, 1996, because they are not emissive uses, pose no significant threat to the environment and are vital to the U.S. economy.

EPA received three comments seeking clarification of the requirements for production for export resulting in transformation after January 1, 1996. The proposal included a discussion, in section C.3.d. ''Administrative Changes to Production Allowance Requirements for Exports that are Transformed or Destroyed,'' (59 FR 56289) of requirements for the 1995 control period. However, the proposal did not explicitly define export requirements for the post-phaseout period.

With this action, EPA permits production of class I controlled substances (except methyl bromide) after January 1, 1996, if the substance is explicitly produced for export or domestic uses resulting in transformation or destruction. As a

result, EPA requires producers and importers to receive an IRS certification of intent to transform or a destruction verification from all second- or third-party transformers or destroyers, whether the transformer or destroyer is domestic or foreign. Several U.S. companies commented that they currently use the IRS certificate of intent to transform in transactions with foreign transformers. For the sake of simplicity, these commenters suggested that the IRS certificate be required for all production and importation explicitly for uses resulting in transformation, whether they be foreign or domestic.

Today's rule maintains the current requirement that producers and importers submit to EPA the IRS certificates of intent to transform, or the destruction verifications, with the quarterly reports (see Section C.7., Recordkeeping and Reporting). In response to comments and to ease the reporting burden on industry, EPA permits producers and importers to submit a one-time-per-control period IRS certificate for each customer. Quarterly reports may reference the original IRS certificate submitted for each transformer and simply list the quantity of subsequent sales.

With today's rule, EPA maintains the current requirement published in the **Federal Register** on December 10, 1993, that quantities of class II controlled substances transformed or destroyed must be reported on a quarterly basis. EPA maintains the requirement to meet U.S. obligations under the Protocol to accurately monitor production of class II controlled substances.

*b. Production or Importation of Controlled Substances for Emissive Uses that are Subsequently Transformed or Destroyed.* With today's action, EPA eliminates the specific provisions that grant additional production and consumption allowances, beginning January 1, 1996, for all class I controlled substances, except methyl bromide, produced for emissive uses but later transformed or destroyed. After January 1, 1996, there will no longer be production or consumption allowances for class I controlled substances, except methyl bromide. After January 1, 1996, a producer or importer of methyl bromide who expends production or consumption allowances and subsequently transforms or destroys the methyl bromide will still be able to petition the Agency for additional production and consumption allowances until the phaseout on January 1, 2001.

EPA maintains, for the 1995 control period, the provisions allowing producers and importers to petition the Agency for production and consumption allowances if the controlled substance was produced or imported with expended allowances and subsequently transformed or destroyed.

*Response to Comments:* EPA received no comments regarding the proposal to eliminate procedures after January 1, 1996, that grant additional production and consumption allowances for class I controlled substances that are transformed or destroyed (except methyl bromide) (59 FR 56278). After January 1, 1996, additional production and consumption allowances may be sought for methyl bromide that is transformed or destroyed if it was originally produced with expended allowances.

*c. The Post-Phaseout Procedures for Granting Destruction and Transformation Credits.* In today's action, EPA creates limited destruction and transformation credits to be granted after January 1, 1996, for the destruction or the transformation in the United States of class I controlled substances (except methyl bromide) taken from a use system in the United States under certain circumstances. Destruction and transformation credits can only be obtained by entities whose applications are nominated by the U.S. government to the Protocol Secretariat for essential-use exemptions. The transformation and destruction credits are granted for the calculated amount of controlled substance transformed or destroyed minus a 15 percent offset.

With today's action, an eligible person granted destruction and transformation credits by EPA for the destruction or transformation of an amount of a controlled substance taken from a U.S. use system may use the credits to newly produce or import the class I controlled substance for which they were nominated for an essential-use exemption. Today's action requires reporting on the source of material imported with credits. The reporting requirement is designed to deter abuse of credits as a means of illegally importing material as discussed in section B., ''Imports of Used Controlled Substances.''

*Response to Comments:* EPA received six adverse comments, and three supportive comments to the proposal. EPA proposed (59 FR 56279) to grant destruction and transformation credits after January 1, 1996 to anyone who documents destruction or transformation of class I controlled substances (except methyl bromide) taken from a use system in the U.S.

The comments challenging EPA's proposal expressed concern that granting destruction and transformation credits which can be used to produce or import virgin class I controlled substances (except methyl bromide) contradicts EPA's message of phasing out ozone-depleting substances and making the transition to alternatives. Four of the comments not supporting credits were from industry and the other two were from environmental groups.

The comments challenged the proposed credits as violating U.S. obligations under the Protocol because they encourage production and importation of class I substances beyond the phaseout dates agreed to by Protocol Parties. The commenters challenged EPA's claim that environmental benefits would result from a scheme allowing continued production and importation beyond the phaseout, even if more than an equivalent amount of controlled substance were destroyed or transformed. EPA believes the Protocol allows production beyond the phaseout if the amount produced is equivalent to the amount destroyed by technologies approved by the Parties, as explained in the proposal's discussion (59 FR 56280) of the Protocol's definition of production. The proposal also discusses the environmental benefits of preventing release to the atmosphere of material by encouraging destruction or transformation of unwanted material in exchange for the production of material that will be used (59 FR 56281).

A commenter cited Congressional legislative history from the drafting of the CAA that was unfavorable regarding destruction. Congressional debate included a statement that ''the Protocol's exclusion for manufactured substances that are subsequently destroyed is too broad and does not include adequate safeguards to preclude abuse.'' EPA recognizes the concerns expressed in the legislative history for the CAA and intends to offer these credits to a very limited universe of people.

A commenter also pointed out that substances produced or imported with credits would be subject to the excise tax, eliminating the incentive to destroy or transform a material. A person would be paying a double tax. The tax would be paid on the original material and there would be a tax on the new material produced or imported with the credits. A commenter suggested that a tax credit or tax deduction would provide a greater financial incentive than the proposed credits. EPA acknowledges concerns about taxes and will therefore only grant credits when they are absolutely necessary.

In response to comments on destruction and transformation credits, EPA is significantly limiting the

circumstances under which a person can obtain credits. With today's action, only a person that has exhibited an essential need for controlled substances beyond the phaseout date will be able to obtain destruction and transformation credits. EPA believes that only a person who has an essential need for a controlled substance should be eligible for credits that allow an exchange of destroyed or transformed existing material for the production or importation of new material.

EPA today defines a person who has demonstrated the essential need for controlled substances beyond the phaseout, and can, therefore, obtain credits, as a person whose application was nominated by the U.S. government to the Protocol for an essential-use exemption. The nomination by the U.S. government defines eligibility for the credits, not the acceptance of the nomination by the Parties to the Protocol. For example, the U.S. Air Force's Titan Rocket has been nominated by the U.S. government for an essential use exemption and is therefore eligible for credits. A person who has been nominated to the Protocol for an essential-use exemption is eligible to be granted destruction and transformation credits after January 1, 1996, upon the destruction or transformation of a controlled substance taken from a use system in the U.S. Only for the control period(s) for which the U.S. government made nominations to the Protocol is a person eligible for the credits. If for some reason the nomination is revoked, the person's eligibility for credits is also revoked.

EPA received three comments that suggested a larger offset than the 15 percent proposed for destruction and transformation credits. The commenters challenged the 15 percent as being too small to provide an environmental benefit in a system that permits production or importation of new controlled substances after the phaseout. All three commenters suggested a 50 percent offset to ensure environmental benefits from the use of credits in the production or importation of new ozone-depleting substances. EPA justified the use of a 15 percent offset in the proposal citing environmental benefits (59 FR 56280) and basing the offset on current destruction capacity in the U.S (59 FR 56281). EPA believes that today's action significantly limits the universe of people who can obtain credits. The limitation of who can obtain credits to those with a critical need, as defined by their essential-use nomination to the Protocol, significantly reduces the amount of production or importation of new material that will occur after the phaseout. EPA anticipates credits will only be sought and used in situations when one of the small number of people with critical needs encounters unforeseen circumstances or a catastrophic loss of material produced with essential-use allowances. With today's action, EPA will allocate credits equal to the calculated level of controlled substance destroyed or transformed minus the 15 percent offset. The destruction must occur in an approved destruction technology. An eligible person may request credits equal to 85 percent of the calculated level of controlled substance destroyed or transformed.

EPA believes a person with an essential need for a controlled substance, as defined by a U.S. nomination to the Protocol, will view today's system of credits as an opportunity to satisfy critical needs, especially if material produced with essential-use allowances is lost to a catastrophe. EPA views today's action as a method to encourage the destruction or transformation of unwanted controlled substances that were taken from a use system in the U.S. that might otherwise be released to the atmosphere.

EPA received many comments, from both industry and Federal agencies, challenging the use of credits for importing controlled substances after the phaseout as yet another opportunity for illegal imports. As discussed in the proposal (59 FR 56285), and below in this rulemaking, EPA is working to confront the illegal import of controlled substances. In 1994, EPA formed an inter-government task force with the Internal Revenue Service and the Customs Service to investigate illegal imports. An industry coalition formed a special committee to assist Federal agencies in investigating illegal imports. The efforts of government and industry have focused on the mislabelling of controlled substances and the submission of fraudulent documents that allow the illegal entry of imported controlled substances into U.S. commerce. In commenting on the proposed rule, both government and industry expressed concern that the use of credits for imports would be another chance for the submission of fraudulent documents. In response to these comments, EPA is requiring documentation of the source of imported material as required in § 82.13(g)(2), where applicable.

*Clean Air Act Restrictions on the Use of Credits:* With today's action, EPA limits the total amount of transformation credits and destruction credits that can be used in a control period to the production caps in the phaseout schedule of section 604 of the CAA, outlined in Table I.

TABLE I.—TITLE VI OF THE CLEAN AIR ACT AMENDMENTS OF 1990

[Pre-Accelerated Phaseout Schedule for Production of Ozone-Depleting Substance]

| Date | Carbon Tetra-chlo-ride (per-cent) | Methyl Chloro-form (per-cent) | Other class I sub-stances (per-cent) |
|---|---|---|---|
| 1996 | 15 | 50 | 40 |
| 1997 | 15 | 50 | 15 |
| 1998 | 15 | 50 | 15 |
| 1999 | 15 | 50 | 15 |
| 2000 | ..... | 20 | ..... |
| 2001 | ..... | 20 | ..... |

*Response to Comments*—Clean Air Act Restrictions on the Use of Credits to Produce or Import: EPA received no comments challenging the CAA limits on the use of destruction and transformation credits. EPA explained in the proposal (59 FR 56276) that the provisions of the CAA are more stringent than the Protocol in defining limits on production after January 1, 1996. The proposal also explained the interaction of authorities under the Protocol and the CAA that allow credits to be granted for transformation or destruction of controlled substances that could be used for subsequent production or importation, within the CAA phaseout caps. EPA believes that these limits represent legally binding ceilings, but that actual production or importation under the category of credits and allowances will be substantially below the limitations established by today's rule.

*Procedures for Requesting Credits:* With today's action, EPA creates a system for granting destruction and transformation credits as an incentive to destroy and transform controlled substances recovered from U.S. use systems and to provide critical supplies to those who have been nominated for essential use exemptions. In today's rule, a person may submit a request to the Agency after January 1, 1996, for credits based on the destruction or transformation of a quantity of controlled substances taken from a use system in the United States. The destruction must have occurred in an approved destruction technology as under § 82.3. The eligible person must present a sales receipt demonstrating the material was purchased from the owner of a use system in the U.S. or documenting that the material produced or imported with essential-use allowances became unusable due to an

unforeseen event. The person requesting the credits needs to identify the amount of controlled substance that was destroyed or transformed and the previous use of the controlled substance. In addition, the person needs to submit to EPA a copy of the destruction efficiency certification as under § 82.13(k) or the IRS certificate of intent to transform. Upon approval, EPA would grant the person credits equal to the amount of the specific controlled substance they destroyed or transformed minus a 15 percent offset. Approval will be based upon a review of the completeness and accuracy of the documentation. The credits may be used for the production or importation of an equivalent calculated level of the controlled substance for which the eligible person was nominated to the Protocol. For example, the U.S. Air Force's Titan Rocket was nominated by the U.S. Government for an essential use exemption for methyl chloroform and could therefore use credits to produce or import methyl chloroform. Consistent with the Protocol limits on net production for control periods, EPA restricts the use of credits to the control period in which the transformation or destruction occurred. Credits can not be carried over from one control period to the next. The recordkeeping and reporting requirements associated with the credits described in these paragraphs are outlined below in section C.7., ''Reporting and Recordkeeping for Destruction and Transformation Credits.''

The Agency will create a balance of credits for the person upon approval of a request for credits. The holder of the credits may write a letter to a producer or importer conferring the right to produce or import an amount of the class I controlled substance for which they were nominated to the Protocol for an essential-use exemption. Producers and importers will submit the letters from credit holders conferring rights to produce or import with their quarterly producer's report. Deductions will be made from the credit holder's balance, when the quarterly production and importation reports are submitted to EPA. Inter-pollutant transfers of credits, as currently defined in § 82.12, will be permitted within the Groups of class I substances listed in appendices A and F to subpart A, subtracting the one percent offset. Inter-company transfers of credits will also be permitted, as currently defined in § 82.12, subtracting the one percent offset. The preamble of the proposal misstated that inter-Party trades of credits would be permitted (this was not included in the proposed regulatory language). EPA is not permitting inter-Party trades of destruction and transformation credits under today's rule because the credits are designed to meet the essential needs of U.S. companies for controlled substances and these needs can be met through U.S. production or imports.

2. Post-Phaseout Requirements for Essential-Uses

The **Federal Register** NPRM published on November 10, 1994, discussed Protocol decisions regarding essential uses and the U.S. process for accepting requests and making nominations to the Protocol Secretariat. The NPRM also proposed a U.S. program for implementing essential-use exemptions domestically after the phaseout on January 1, 1996 (59 FR 56282).

The November 10, 1994 proposal distinguished between essential-use nominations for specific entities for specific uses and the global essential-use exemption for laboratory and analytical applications. All the nominations and the quantities presented in the proposed rulemaking (59 FR 56284), both specific and global, were adopted at the Sixth Meeting of the Parties to the Protocol in October 1994.

EPA would like to note that information required by today's action to monitor the production and consumption of essential-use controlled substances will be treated in accordance the provisions of 40 CFR Part 2, Subpart B governing confidential business information if so claimed by the company in a letter or on the submitted documents.

*Creation of Essential Use Allowances:* With today's action, EPA creates a new class of allowances called ''essential-use allowances,'' to be allocated for designated control periods beginning January 1, 1996. EPA received no comments that challenged the proposed creation of essential-use allowances during the post-phaseout period. To effectively implement a program of essential-use allowances, EPA is including a definition of ''unexpended essential use allowances''.

*Allocation of Essential Use Allowances:* EPA allocates essential-use allowances and exemptions based on the nominations agreed to by the Parties to the Protocol at the Sixth Meeting in October 1994. As indicated on the table below, EPA allocates essential use allowances for specified controlled substances for the years 1996 and 1997. Although the Technology and Economic Assessment Panel received nominations for essential-use exemptions beyond 1997, today's action only includes those exemptions for 1996 and 1997 agreed to by the Parties at the October 1994 meeting. A manufacturer of metered dose inhalers (MDIs) who was listed in the proposal (59 FR 56284), and whose nomination for an essential-use exemption was agreed to by the Parties, was sold to two other companies late in 1994. The essential-use allowances for this company are today allocated to the two purchasing companies according to the proportionate need for the controlled substances to manufacture specific products. EPA reserves the right to revise the allocation of essential-use allowances and other essential-use exemptions based on future decisions of the Parties to the Protocol.

ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL AT THE SIXTH MEETING IN OCTOBER 1994

| Company | Year | Chemical | Quantity (metric tons) |
|---|---|---|---|
| **(i) Metered Dose Inhalers—Aerosols** | | | |
| Members of the International Pharmaceutical & Aerosol Consortium (IPAC)*. | 1996 | CFC–11 | 749.8. |
| Abbot Laboratories | | CFC–12 | 2353.2. |
| Armstrong 1997 | | CFC–114 | 314.1. |
| Boehringer Ingelheim | 1997 | CFC–11 | 658.3. |
| Glaxo | | CFC–12 | 2166.5. |
| 3M | | CFC–114 | 311.4. |
| Rhone Poulenc Rorer | | | |
| Schering Corporation | | | |
| Miles Inc | 1996 | CFC–12 | 5.1. |
| | | CFC–114 | 10.2. |

ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL AT THE SIXTH MEETING IN OCTOBER 1994—Continued

| Company | Year | Chemical | Quantity (metric tons) |
|---|---|---|---|
| | 1997 | CFC–12 | 5.2. |
| | | CFC–114 | 10.5. |
| Sankofi Winthrop, Inc. | 1996 | CFC–12 | 5.0. |
| | | CFC–114 | 19.4. |
| | 1997 | CFC–12 | 5.3. |
| | | CFC–114 | 21.2. |
| **(ii) Space Shuttle—Solvent** | | | |
| NASA/Thiokol | 1996 | Methyl Chloroform | 56.8. |
| | 1997 | Methyl Chloroform | 56.8. |
| **(iii) Laboratory and Analytical Applications** | | | |
| Global Exemption | 1996 | Class I (except Group IV) | No quantity specified. |
| | 1997 | .....do | Do. |

*IPAC consolidated requests for an essential use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.

*Response to Comments—Allocation of Essential Use Allowances:* EPA received one comment from a manufacturer of generic MDIs that challenged the specific allocation of essential-use allowances for MDIs. The commenter claimed that EPA is unwittingly excluding companies that produce generic-brand MDIs from competing in the market because they are not included in today's allocation. EPA did not exclude companies that produce MDIs but only included those companies/entities that did apply for essential-use exemptions. EPA did not receive an application for essential-use exemptions for class I controlled substances from the commenter or any other manufacturer of generic MDIs in response to the initial call for applications, published in the **Federal Register** on May 20, 1993. The commenter did apply for an essential-use exemption in response to EPA's notice in the **Federal Register** on October 18, 1994. EPA believes the procedures followed in publishing **Federal Register** notices for essential-use exemptions provides an open forum for the participation of any interested person. Therefore, the fact that the commenter did not submit an application for an essential-use exemption in response to the May 20, 1993 request is not a deficiency on the part of the Agency. Fortunately, in accordance with the provisions of the Protocol, EPA may adjust the U.S. allocation of essential-use exemptions and essential-use allowances in the future based on future actions by the Parties to the Protocol. In reviewing the responses to the October 18, 1994 **Federal Register** notice, the U.S. government nominated the commenter's application for an MDI essential-use exemption to the Montreal Protocol Secretariat. As stated above, EPA reserves the right to adjust the allocation of essential-use allowances and exemptions based on future decisions of the Parties.

A consortium of MDI manufacturers that received essential-use allowances requested that EPA give the consortium discretion to allocate essential-use allowances among the member companies of the consortium based on their confidential estimates of market need. EPA requires the consortium to submit a listing of the percentage allocation of essential-use allowances to each member company so the Agency can monitor compliance with today's requirements. EPA understands the consortium will take responsibility for coordinating recordkeeping and reporting on behalf of its members. EPA retains the right to review and alter the consortium's discretion to allocate essential-use allowances among its members through a formal notice.

A commenter suggested EPA create a system for supplemental allowances in cases when a quantity of material, produced or imported with essential-use allowances, becomes unusable due to unforeseen events. Citing the potential risks of fire, earthquake and flood, the commenter suggested that a recipient of essential-use allowances would document the event that made the controlled substance unusable in order to obtain the ''supplemental'' allowances. EPA believes that a provision for supplemental allowances is unnecessary given today's creation of transformation credits and destruction credits in A.1.c., ''The Post-Phaseout Procedures for Granting Destruction and Transformation Credits.'' In the event of some unforeseen event that makes the substance produced or imported with essential-use allowances unusable for the essential application, the eligible company could obtain transformation credits or destruction credits in order to replace the lost material. The procedures for obtaining the credits are the same as those described above in A.1.c. The credits would be granted for the destruction (in an approved destruction technology) or the transformation of the specific controlled substance that became unusable due to the unforeseen event, or for the destruction or transformation of a quantity of recovered class I controlled substance that was purchased from the owner/operator of a U.S. use system. Only companies that the U.S. government nominated to the Protocol Secretariat for essential-use exemptions, will be able to obtain destruction and transformation credits after the January 1, 1996 phaseout.

EPA received no comments on the allocation of essential-use allowances to NASA/Thiokol. The comments on the global exemption for laboratory and analytical applications is discussed below.

*CAA Limits on Essential Use Allowances:* In today's action, EPA authorizes continued production or importation after the phaseout for the essential uses and exemptions permitted under the Montreal Protocol and allocated in today's action, but not to exceed the maximum allowable limits set forth in section 604(a) of the CAA. A more detailed discussion of the

authorization for production and importation after the phaseout for essential uses under the Protocol and CAA, with limits set by section 604 of the CAA, is contained in the proposed rulemaking published November 10, 1994. Specific references to the authorization and limits are found in the sections on destruction and transformation credits (59 FR 56479) and essential-use allowances (59 FR 56283). The Section 604(a) phaseout schedule in the CAA that limits production and importation of class I controlled substances is shown in TABLE I of today's preamble.

*Response to Comments—CAA Limits on Essential Use Allowances:* A commenter noted that the proposal's discussion of CAA essential-use exceptions failed to include the exemptions for production of halon-1211, halon-1301 and halon-2404 for fire suppression or explosion prevention under section 604(g)(1) and for fire suppression or explosion prevention in association with domestic production of crude oil and natural gas energy on the North Slope of Alaska under section 604(g)(3). EPA wishes to acknowledge all exceptions for essential uses that are cited in section 604 of the CAA, including uses for fire suppression or explosion prevention, and for fire suppression or explosion prevention in association with domestic production of crude oil and natural gas energy on the North Slope of Alaska. The exceptions for essential uses cited in the CAA can be authorized by EPA, after due consideration specified in the CAA, beyond the phaseout schedule originally set forth in section 604(a), which for class I substances (except methyl bromide) is 2000 (2002 for methyl chloroform) but can only be done consistent with actions permitted under the Montreal Protocol. With today's action, EPA is initiating the domestic essential-use program as authorized under the accelerated phaseout schedule of the Protocol, within the limits placed on total production and importation as under the phaseout schedule in section 604(a) of the CAA.

A commenter stated their belief that EPA has discretion, under the CAA, to allow production and importation beyond the phaseout for essential uses without imposing the percentage limitations of the phaseout schedule in section 604. According to the commenter's interpretation, the CAA is ''ambiguous regarding whether the schedule in section 604 remains in force after the phaseout has been accelerated pursuant to section 606.'' Given the ambiguity, the commenter suggested that EPA's acceleration of the schedule under section 606 would supplant the 604 limitations and the 604 schedule would no longer have legal effect. EPA does not believe that the CAA is ambiguous. EPA believes that section 606 authorizes EPA to accelerate the phaseout schedule to be ''more stringent than set forth in section 604'' but that exercise of this authority does not diminish the legal relevance of section 604. In addition, EPA does not believe that section 604(d) is ambiguous about the granting of essential use exceptions. Section 604(d) specifically refers to ''the termination of production required by subsection (b),'' which is the phaseout date of January 1, 2000, for class I controlled substances (2002 for methyl chloroform). EPA is legally compelled by the CAA to apply the percentage limitations in 604 on production and importation for essential-uses.

A commenter pointed out that the regulatory language in the proposal (59 FR 56297), under § 82.4, did not reflect the preamble discussion of a national limit on production based on the phaseout schedule under section 604(a) of the CAA. Although § 82.4 in the proposal refers to individual levels, when aggregated they would reflect a national production limit as set in the CAA. With today's action, EPA clarifies the regulatory language to reflect a national limit, not a limit for each producer, based on the percentage limitation as defined in section 604(a) of the CAA.

A commenter pointed out that the regulatory language in the proposal (59 FR 56297) did not correspond with the preamble discussion of using essential-use allowances for the import of controlled substances. With today's action EPA corrects the inadvertent omission of regulatory text language permitting the use of essential-use allowances to import controlled substances.

A commenter suggested that the proposal's (59 FR 56297) discussion of limits on total production and importation based on a combination of essential use allowances, transformation credits and destruction credits should give a priority to essential use allowances. As discussed above, EPA allocates transformation and destruction credits only to those entities that have been nominated by the U.S. to the Protocol. Therefore, EPA believes entities allocated essential-use allowances will have preference, by virtue of their demonstrated need for controlled substances beyond the phaseout as acknowledged in nominations to the Protocol. In today's action, only those essential uses nominated by the U.S. to the Protocol will be able to destroy or transform to obtain credits. Given the small size of these essential use nominations, EPA believes it is unnecessary to grant a priority to essential uses allowances within the limits established by the CAA in the section 604(a) phaseout schedule (see TABLE 1).

*Procedures for Specific Essential-Use Allowances:* With today's action, EPA creates a system in which entities receiving essential-use allowances for specific essential uses, i.e., metered dose inhalers and NASA/Thiokol, confer to a producer or importer the right to produce or import a specific quantity of the specific controlled substance. The company conferring the essential-use allowances must certify to the producer or importer that the controlled substance will only be used for the specified essential use and not resold. The producer or importer will include with their quarterly report the quantity produced or imported for essential uses and submit the letters from recipients of essential-use allowances that confer the right to produce or import.

With today's action, EPA limits the use of essential-use allowances to production and importation. EPA prohibits essential-use allowances from inter-pollutant and inter-company transfers and inter-Party trades. EPA received no unfavorable comments on these limitations during the comment period. However, EPA received one comment after the comment period requesting permission for inter-pollutant transfers of essential-use allowances. The commenter requested inter-pollutant transfers to meet shifts in market demand for MDIs that cannot be predicted. EPA believes that quantities requested for MDIs by the consortium are large enough to meet market demand and contingencies can be addressed through destruction and transformation credits.

*Global Essential Use Exemption for Laboratory Applications:* With today's action, EPA creates a global exemption for laboratory and analytical essential uses of CFCs, methyl chloroform and carbon tetrachloride for the 1996 and 1997 control periods. The global exemption neither defines specific quantities, nor does it identify specific companies or entities. A list of possible analytical and laboratory procedures for which controlled substances might be used is found in appendix G to subpart A, but this list is neither exhaustive, nor restrictive. With today's action, EPA creates a system for implementing the global laboratory essential-use exemption agreed to by the Parties to the Protocol at the 1994 meeting. The

system is designed to ensure that the United States meets its obligations under the Montreal Protocol to monitor and report the quantities produced and imported for laboratories, as well as to collect information on the types of laboratory applications that use the specified class I controlled substances.

*Restrictions on the Global Essential Use Exemption for Laboratory Applications:* With this action, EPA adopts the restrictions for the implementation of the global exemption for laboratory essential-uses agreed to by the Parties to the Protocol and described in appendix G to subpart A of 40 CFR part 82. Class I controlled substances can only be sold for laboratory or analytical applications under the global essential-use exemption for 1996 and 1997, at or above the specified purities and within the size restrictions listed in appendix G, (the size restriction differs if for sale by a producer or importer to a distributor or packager of laboratory supplies).

With today's action, EPA adopts the size and purity restrictions agreed to by the Parties for the global laboratory essential-use exemptions as defined in appendix G. Class I controlled substances (except methyl bromide) for ultimate sale for laboratory or analytical applications during 1996 and 1997 can only be supplied in reclosable containers or high pressure cylinders smaller than three litres, or in 10 millilitre or smaller glass ampoules at the purity levels listed in appendix G.

*Response to Comments—Restrictions on the Global Essential Use Exemption for Laboratory Applications:* EPA received one comment suggesting alternative size restrictions for the sale of controlled substances under the global laboratory essential-use exemption. With today's action, EPA adopts the size restrictions for ultimate sale, agreed to by the Parties to the Protocol at the Sixth Meeting in October 1994, as listed in appendix G.

EPA received one comment that pointed out a common industry practice of re-distilling newly produced material to achieve higher purities. After January 1, 1996, a person re-distilling must purchase newly produced or imported material that meets the purity standards as outlined in appendix G, but may receive the substance in containers larger than the size restrictions in appendix G. Thus, a producer or importer can only sell newly produced controlled substances during 1996 or 1997 that meet the purity standards. If sold to a re-distiller for laboratory applications, or to a distributor of laboratory supplies, the producer or importer may sell the controlled substance in containers larger than the appendix G size restrictions.

*Procedures for Monitoring the Global Essential Use Exemption for Laboratory Applications:* With today's action, EPA authorizes producers and importers to sell controlled substances that meet the prescribed purity standards in appendix G to: (1) Laboratory customers that certify the controlled substance will only be used for laboratory applications and not resold or used in manufacturing; or (2) distributors that certify they will only sell the substance to customers who in turn certify it will only be used for laboratory applications and not resold or used in manufacturing. Producers and importers must sell the controlled substances under the global laboratory essential-use exemption for 1996 and 1997 to laboratory customers in the prescribed size containers at the prescribed purities, as defined in appendix G. However, producers and importers may sell the controlled substances under the global laboratory essential-use exemption for 1996 and 1997 in larger sized containers and at the prescribed purities in appendix G to distributors of laboratory supplies (or re-distillers of materials for laboratories). The producer and importer will report to EPA each quarter the quantity of each controlled substance sold under the global exemption, including the name of the laboratory customer or the distributor that purchased the material and the amount they purchased.

*Response to Comments—Procedures for Monitoring the Global Essential Use Exemption for Laboratory Applications:* EPA received five comments on the proposed procedures for the global essential-use exemptions for laboratory and analytical applications. The commenters agreed with the procedures outlined in the proposed rulemaking (59 FR 56284) for producers and importers. However, the commenters suggested that distributors and/or marketers of laboratory products be added to the list of entities from whom labs can purchase controlled substances during 1996 and 1997 under the global laboratory essential-use exemption. The commenters pointed out that laboratories generally purchase controlled substances from distributors, and not directly from the producers or importers. As a result of the comments, EPA is including distributors of laboratory supplies in the procedures for monitoring the sale of the controlled substances for the global laboratory essential-use exemption during 1996 and 1997.

Distributors can repackage the substance in prescribed size containers to be sold to laboratory customers. Distributors must certify to producers or importers that they will only sell the substance to laboratory customers that certify that they will use the substance for laboratory and analytical uses and will not resell the substance nor will they use it for manufacturing.

With the addition of distributors to the chain of entities under the global laboratory essential-use exemption, EPA revised the reporting requirements accordingly. In addition, EPA received comments suggesting improvements in the proposed reporting procedures to reduce the overall administrative burden and to clarify the reporting of information proposed in § 82.13(u). To reduce reporting burden, a laboratory purchasing the same controlled substances routinely under the global laboratory essential-use exemption will certify once-per-year to the producer or importer, or to the distributor, that the substance is being purchased for laboratory uses and will not be resold or used for manufacturing. The once-per-year reporting by laboratories will reduce the administrative burden for the labs and the supplier of the controlled substance. On the form certifying a purchase for laboratory use, the laboratory customer will estimate the percent of the amount purchased that will be used for each type of laboratory application on the form's printed list.

Each quarter of 1996 and 1997, the distributor of laboratory supplies will submit to EPA a summary of the amounts of controlled substances purchased from producers or importers under the global laboratory essential-use exemption. In addition, distributors will submit each quarter a copy of the once-per-year certificate from each laboratory making its first purchase during that quarter. Distributors will also submit quarterly a summary of the quantities of each controlled substance purchased by each laboratory for whom certificate forms were already filed in previous quarters. EPA will use the quantity of material purchased by each laboratory and their estimate of the percent used for each type of laboratory application to generate the United States report for the Protocol Secretariat on the global laboratory essential-use exemption.

### *B. Imports of Used Controlled Substances*

#### Proposal

In the proposal (59 FR 56285), EPA described the provisions of the Montreal Protocol governing previously used and recycled materials. The proposal also described the requirements promulgated in the **Federal Register** on December 10,

1993, that allowed the importation of used or recycled controlled substances without allowances (§ 82.4 (a) and (b)). As stated in the proposal (59 FR 56285), EPA is investigating many cases of potential fraud and illegal importation of material claimed to be used or recycled. Today's action is designed to mitigate the illegal import of controlled substances by amending the regulatory Program.

*Definition of Used Controlled Substance:* EPA changes the definition of used and recycled controlled substances to include only the term ''used.'' A controlled substance is considered used if it was recovered from a use system, regardless of whether it was subsequently recycled or reclaimed. The change in the definition simplifies references to used substances without introducing confusion about their subsequent treatment. As stated in the proposal (59 FR 56285), EPA intends for recycled and reclaimed substances to be considered used controlled substances.

*Response to Comments—Definition of Used Controlled Substance:* EPA received only supportive comments for the change in the definition of used controlled substances. However, two commenters suggested additional language to further specify the need for reclamation. They suggested that the definition of used controlled substances include a phrase such as, ''cannot be reused without reclamation.'' EPA believes the commenters assumed all controlled substances are used as refrigerants. The section 608 recycling regulation requires reclamation of refrigerants before they can be resold but there is no similar requirement for halons, foam blowing agents, solvents or other uses of controlled substances. EPA believes requiring reclamation of all used controlled substances is unnecessarily restrictive because not all controlled substances are used as refrigerants.

Two commenters suggested that EPA treat reclaimed material as newly produced material and require that consumption allowances be expended for importation. The comments were made to further deter fraudulent imports. With today's action, EPA requires importers of reclaimed material to document the foreign site of reclamation. EPA knows which Parties have reclamation facilities and can verify reclamation of a controlled substance. In addition, there will be no consumption allowances available to import controlled substances after January 1, 1996, and EPA believes only a small quantity of reclaimed material is entering the U.S. Therefore, EPA is maintaining the exemption from the allowance requirements for imported reclaimed materials.

*Information Requirements:* With today's action, EPA requires the following additional information from persons importing used controlled substances:

- The name and quantity of the used controlled substance to be imported (including material that has been recycled or reclaimed),
- The name and address of the importer, the importer I.D. number, the contact person, and the phone and fax numbers,
- Name and address of the source facility (facilities) of the used controlled substance, including a description of the previous use(s), when possible;
- Name and address of the exporter and/or foreign owner of the material,
- The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical,
- The intended future use of the used controlled substance,
- The name, address and contact person of the U.S. reclamation facility, where applicable,
- A certification that the purchaser of the used controlled substance being imported is liable for payment of the tax.

EPA requires that the information listed above be submitted as part of a petition to import used controlled substances as described below. The petition with the information listed above must be submitted to EPA 15 working days before leaving the country of export and must accompany the used controlled substance. If EPA does not respond to the petition within 15 working days, the import is automatically allowed as described below. The petition must also accompany the import through U.S. Customs. EPA determined that requiring the petition 15 days before the shipment is exported, rather than 15 days before it is imported, as proposed, will prevent the material from being stranded if the petition to import is denied.

If the imported controlled substance was reclaimed in a Party country, the importer must provide the name and address of the foreign reclamation facility, as well as the contact person at the facility and their phone and fax number. The name of the foreign reclamation facility should be included with the information listed above, accompanying the import through U.S. Customs, and with a petition to import as described below.

If the imported used controlled substance is intended to be sold as a refrigerant, and has not been reclaimed upon entry into the U.S., EPA also requires that the importer identify the name and address of the U.S. reclaimer to whom the refrigerant will be sent to comply with the standard specified in § 82.152(g). An EPA regulation published in the **Federal Register** on Friday August 19, 1994, (59 FR 42949) states that, ''no person may sell or offer for sale for use as a refrigerant any class I or class II controlled substance consisting wholly or in part of used refrigerant unless * * * it has been reclaimed as defined in § 82.152(g).''

*Response to Comments—Information Requirements:* EPA received many comments supporting new information requirements as the means of discouraging fraudulent activities and actively monitoring imports of used controlled substances. EPA received comments that some of the information requirements listed in the proposed rulemaking (59 FR 56285) would be difficult to obtain and/or provide to EPA. In some cases, the commenters claimed an inability to obtain the information from foreign sources. In other cases, the commenters indicated difficulty in obtaining the information because the company from whom the information should be received would claim it as confidential business information. In today's action, EPA chose the particular information requirements listed above because commenters who suggested them said they would be fairly easy to obtain. Many commenters stated a willingness to provide the information listed above in order to deter illegal imports, although they would be subject to the requirements themselves.

EPA believes the information noted above will provide an opportunity for independent verification of substances being imported. Since the goal is to accurately determine whether the imported substance is in fact ''used,'' EPA considered the practicality of obtaining the information required and the usefulness of this information in verifying the nature of the imported material.

EPA received comments from the halon sector requesting an exemption from the information requirements for imports. These commenters suggested the halon sector should be exempted because: (1) There are so few countries still producing halons, (2) the halon sector in the U.S. is so well organized, and (3) the requirements would be a burden. EPA believes the information requirements will not pose a great burden for the halon sector because the information is commonly known by importers and often incorporated in sales transactions. In addition, U.S.

Customs needs to have import documents that will make a clear distinction between used halons (including recycled and reclaimed), and newly produced halons because of the prohibition on importing newly produced halons. In 1994, halon importers had difficulty providing documents when EPA requested verification that shipments were reclaimed material. EPA is also receiving information that Article 5 producers of halons are exporting newly produced halons to developed countries, and some of this may be entering U.S. commerce. EPA hopes that a shipment-by-shipment information requirement will improve the ability of halon importers to supply documents so that EPA can monitor and ensure the legitimacy of all imports.

*Creation of a Petition Program for Imports of Used Controlled Substances:* With today's action, EPA establishes a process for petitioning the Agency to import a shipment of used controlled substance into the United States. A person must submit a petition to EPA to import each shipment of used controlled substance (recovered, recycled or reclaimed material) at least 15 working days prior to the date the ship is to leave the foreign country. The petition submitted to EPA must include the information listed above in Section B, ''Imports of Used Controlled Substances.'' EPA will review each petition on a shipment-by-shipment basis and determine whether or not to object before the date the ship is to leave the foreign country, within the 15 working days from the time of submission. If EPA objects to a petition, the person submitting the information will be notified prior to the time the shipment is to leave the country of export. If EPA needs additional information, an objection notice will be sent and the importer may re-submit the petition with the requested information. The person may proceed with the import if EPA does not object to the particular import of used controlled substance within the 15 working days. EPA will send the person a non-objection notice, and notify U.S. Customs Service and the IRS of the shipment.

With this rule, EPA also creates a petition process for a person who imports the same used controlled substances from one source many times during a year. EPA will accept an annual petition, at least 15 working days before the first day of the year, that includes all the applicable information required in petitions for individual shipments. In place of exact quantities and particular use systems from which the material is taken, the annual petition must include an estimate of the number of shipments and quantity of specific used controlled substances that will be imported during the year and the likely sources (previous uses) of the used material. Following the importation of each shipment during the quarter, the importer must submit to EPA, referencing the annual petition, the invoice, the bill of lading, and a detailed description of the use system(s) from which the material(s) was taken. The annual petition procedure is designed for a company that frequently imports the same used controlled substances from the same source (foreign supplier).

*Response to Comments—Creation of a Petition Program for the Importation of Used Controlled Substances:* EPA received seven comments supporting the creation of a permit/petition system for the import of used controlled substances as proposed (59 FR 56285). Two of the comments supported an annual permitting system. Four comments supported some sort of shipment-by-shipment permitting system. Two commenters suggested an alternative system in which importers petition EPA on a shipment-by-shipment basis. All the companies supporting a permit or a petition process agree that it will involve additional paperwork on their part but they would rather have the process in place to ensure all imports are legitimate. A petition process was recommended because it would be less onerous than a permit but accomplish the same goal of maintaining the integrity of the market-based program that encourages the transition from class I controlled substances. To reduce the administrative burden of petitioning for the import of very small amounts, EPA received comments that suggested adoption of a *de minimus* amount for which companies would not need to petition. The commenters pointed out that laboratories and reclaimers in the U.S. often receive small samples of used controlled substances for analysis. Due to these suggestions and common industry practices, EPA exempts imports of 150 pounds or less from the petition requirements. However, all importers, regardless of quantity, are still required to report quarterly. The exemption from the petition requirement for 150 pounds or less applies to individual shipments which cannot be aggregated. EPA believes this *de minimus* amount reduces burdens on industry while still deterring the illegal entry of controlled substances.

EPA believes a process of requiring petitions for imports will deter the fraudulent importation of mislabeled controlled substances, and will provide greater control over the entry of used substances into the United States. The European Union (EU) currently requires permits of all importers. The EU uses the permits to monitor shipments and investigate suspected mislabeled ozone-depleting substances. EPA believes that adoption of a similar system will increase the effectiveness of enforcement actions against illegal imports. With today's action, a person can import used controlled substances unless EPA issues an objection notice to a petition.

EPA will forward the non-objection notices to U.S. Customs and the IRS to alert them of expected shipments of used class I controlled substances at U.S. ports. Because EPA will receive the petitions prior to the date the material is shipped from a foreign port, U.S. Federal Agencies will have time to investigate the veracity of the claimed origin of the material, and anticipate its arrival.

Currently, EPA receives a monthly list of importers of controlled substances from U.S. Customs. A petition system will allow EPA to match the information from importers' petitions for used class I controlled substances with the monthly imports on the U.S. Customs list. A person appearing on the U.S. Customs list of imports, who never submitted a petition, or who obtained an objection notice in response to a petition, would be in potential violation of the regulation for that shipment.

EPA would like to clarify that for ships that are on- or off-loading controlled substances for on-board use or that was used on-board, ship owners/operators are exempted from requirements for imports and exports as in the current regulation. Since these controlled substances are not being sold, but only used on-board or recovered from on-board use and sold only for reclamation, these substances cannot be considered exports or imports. EPA will rely on the records kept by shipping companies and vessels to verify on-board use of controlled substances.

*Certification by the Country of Export:* Many commenters supported the proposed requirement (59 FR 56285) that all imports of used substances be accompanied by a certification from the country of export. EPA proposed this particular requirement in anticipation of a discussion of illegal trade in controlled substances during the 1995 meeting of the Parties to the Protocol. EPA anticipates that certification by the country of export will be one of the options considered by the Parties to confront illegal trade of controlled substances. At this time, however, EPA

cannot incorporate this procedure into the regulation until the Parties make a decision to adopt it. Without an international agreement, EPA cannot compel government agencies of another Party to provide the information.

If the Parties agree to adopt the certification of exports of used controlled substances during the 1995 Meeting, EPA would be required to establish a program to certify U.S. exports of used controlled substances. EPA already has a limited certification program for certain reclamation facilities. Under this program, reclamation facilities must be able to ensure that previously used refrigerant will be reclaimed to a level of purity specified in § 82.152(g). With regard to exports of used substances, if the Parties adopt a certification procedure, U.S. exporters would be required to certify that the ''used'' substance was taken from a use system. The exporter might also be required to keep records on selected items from the list of information requirements above, to facilitate future verification.

*C. Program Adjustments and Clarifications to Become Effective in the 1995 Control Period*

1. Changes in Requirements for Exports to Article 5 Countries

Beginning with the 1995 control period, EPA changes the name of potential production allowances to Article 5 allowances. In today's rule, EPA also eliminates the process of converting potential production allowances to production allowances for all control periods, beginning with the 1995 control period. EPA assigns Article 5 allowances for the 1995 control period, and subsequent control periods, to companies that have allocated baseline production allowances for class I controlled substances, including methyl bromide. A description of provisions in Article 2 of the Montreal Protocol permitting additional production for Article 5 countries was included in the proposed rulemaking published on November 10, 1994 (59 FR 56286).

With this rule, EPA creates a system in which a company notifies the Agency at the end of each quarter of their exports to Article 5 countries. EPA will deduct Article 5 allowances equal to the amount of controlled substance exported to Article 5 countries from the company's balance of Article 5 allowances. With today's action, EPA permits inter-pollutant and inter-company transfers of Article 5 allowances as proposed but is not permitting inter-Party trades. The Agency determined that inter-Party trades of Article 5 allowances would violate the provision of the Protocol that specifically allows additional production by each Party for export to Article 5 countries.

*Response to Comments:* EPA received five comments supporting the up-front allocation of Article 5 allowances and the change in the system for deducting Article 5 allowances from a company's balance on a quarterly basis. EPA received two comments that did not support the allocation of Article 5 allowances.

A commenter suggested that allocating Article 5 allowances after January 1, 1996, would be unnecessary because Article 5 countries have sufficient production capacity to supply their own needs. EPA received letters from four producers of controlled substances in Article 5 countries (two are subsidiaries of the commenter) asking that EPA not authorize additional production for export to Article 5 countries. These Article 5 producers claimed that they could provide material for all the Article 5 countries in their region, i.e., South America, Southeast Asia.

The Parties included provisions in the Protocol to assure a continued supply of controlled substances for Article 5 countries beyond the phaseout in Article 2 (developed) countries. EPA recognizes that certain facilities in Article 5 countries have the production capacity for production of specific, but not all, ozone-depleting substances. However, the Montreal Protocol limits any increases in production of controlled substances in Article 5 countries to that needed to meet their own basic domestic needs.

A commenter did not support the proposed allocation of Article 5 allowances because they believe Article 5 allowances would create opportunities for controlled substances to be produced for export to Article 5 countries and illegally be imported back into the U.S. or be diverted to U.S. commerce and never actually be exported. The current regulation, in accordance with the Protocol, requires exporters to obtain a signed certification from an Article 5 importer that the controlled substances cannot be re-exported, and if re-exported the importer is in violation and subject to a financial penalty. In addition, with today's action, EPA prohibits the sale of material in the U.S. that was produced with Article 5 allowances. This does not change any legal requirements for Parties under Article 5. EPA believes that today's requirement addresses the concern about Article 5 allowances and illegal imports.

The Parties to the Protocol adopted provisions allowing additional production for export to Article 5 countries for sound environmental reasons as explained in the proposal (59 FR 56287). In today's action, EPA implements the provisions of the Protocol in accordance with desire of the Parties to deter the construction of new, or expansion of existing, manufacturing facilities in Article 5 countries.

*CAA Limits on U.S. Post-Phaseout Production:* With today's action, the Agency corrects the date from which, and until which, companies may produce 15 percent of baseline allowances for export to Article 5 countries. CAA section 604(e)(2)(C) permits production for developing countries to exceed baseline allowances by up to 15 percent beginning January 1, 2000, and to continue until January 1, 2010 (2012 in the case of methyl chloroform). However, the Protocol permits production for export to Article 5 countries at 15 percent of baseline allowances beginning with the phaseout date (January 1, 1994, for halons, and January 1, 1996, for CFCs, methyl chloroform and carbon tetrachloride) and continuing for ten years after the Protocol phaseout.

With today's action, and subsequent to the U.S. accelerating its phaseout dates, EPA permits each producer 15 percent of their baseline production allowances for export to Article 5 countries as under the Protocol, but in accordance with the restrictions on the U.S.'s overall production as imposed by the CAA. EPA believes the overall limit the CAA imposes on U.S. production will never be reached but must acknowledge this legal upper limit.

Because the CAA only allows 10 percent additional production for Article 5 countries up until 2000, EPA will count 5 percent of United States' total production for Article 5 countries against the annual percent limitations in the phaseout schedule of section 604 of the CAA as shown in TABLE I, (i.e., 40 percent for CFCs in 1996). The remaining 10 percent of production for Article 5 countries will be added to the annual percent limitation in the CAA phaseout schedule (i.e., 10 percent + 40 percent = 50 percent for CFCs in 1996). As an example, EPA will allocate producers 15 percent of their baseline production allowances in 1996 which is expended when producing for Article 5 countries. Continuing with the example, in EPA's tracking system, EPA will subtract 5 percent of the 15 percent allocated for export to Article 5

countries from the CAA annual percentage limitation of 40 percent for CFCs in 1996, yielding a national production limit of 35 percent for all other post-phaseout production exemptions: Essential-uses, transformation credits and destruction credits. EPA believes it is highly unlikely that U.S. production will ever approach the pre-accelerated phaseout cap set forth in section 604(a) of the CAA through the combination of the exceptions allowed in today's rule; however, it is important that EPA explicitly outline how it intends to ensure that the caps of the CAA are met.

*Response to Comments—CAA Limits on U.S. Post-Phaseout Production:* EPA received no comments on the proposed (59 FR 56287) limits on production imposed by the CAA for the use of Article 5 allowances in combination with essential use allowances, destruction credits and transformation credits after January 1, 1996. Therefore, with today's action, EPA permits production based on limits imposed under section 604(e)(2) and 604(a) of the CAA plus ten percent of the baseline for export to Article 5 countries. EPA believes this overall limit imposed by the CAA will never be reached.

2. Administrative Changes to the Consumption Allowance Requirements for Exports

In the proposal (59 FR 56288), EPA considered various methods of streamlining the administrative procedures for refunding consumption allowances when controlled substances are exported to a Party. Based on comments and further consideration, EPA is maintaining the system in which producers expend both production and consumption allowances to produce class I controlled substances for the 1995 control period (and for methyl bromide until 2001). EPA also maintains the procedure in which companies request a ''refund'' from EPA of consumption allowances expended to produce controlled substances exported to a Party during the 1995 control period.

*Response to Comments:* EPA received two comments that supported the proposed system (59 FR 56288) for expediting the refund of consumption allowances when controlled substances are exported to a Party to the Protocol. Four comments were received that preferred the proposed option to eliminate the requirement that producers expend consumption allowances when producing for export. EPA also received two comments challenging the proposed system to expedite the refund of consumption allowances, stating that the double submission of documents would be unnecessarily burdensome.

With today's action, EPA chooses to maintain the current procedure for refunding consumption allowances once a company exports a controlled substance to a Party. EPA maintains the procedure in order to closely monitor exports in the final year before the phaseout. EPA wishes to continue receiving documentation of exports as part of the campaign against illegal imports. Since the proposal was written (59 FR 56275), EPA has become increasingly concerned about illegal imports entering the U.S. as a result of fraudulent claims that they are subsequently exported. Many deceptive activities are being taken to avoid the IRS tax on ozone-depleting substances. The IRS tax code exempts a percentage of exported controlled substances from the tax. EPA believes that people are importing controlled substances and fraudulently claiming their subsequent export to avoid the tax. EPA is concerned that people are submitting fraudulent documents about either non-existent exports or about exported shipping containers filled with some material other than the controlled substances claimed in the export documents. The receipt of documents is a component of EPA's compliance and enforcement program against illegal imports. EPA wishes to maintain the current refund procedure for consumption allowances in 1995 to monitor exports and deter illegal activities.

With today's action, EPA chooses not to expedite the process of refunding consumption allowances in response to industry comments. EPA initially proposed the expedited refund of consumption allowances believing it would assist industry in the final year before the phaseout. However, industry comments expressed legitimate concern that the proposed procedure, with the double reporting to expedite the refund, would actually be an increased burden. Many industry comments pointed out the complexity of the proposed procedures and the undesired potential for miscalculations and double-counting. In addition, a commenter noted the difficulty EPA would face in designing a new tracking system for only one year to accommodate the double reporting of contingent consumption allowances followed by a confirmation of the consumption allowances. EPA now recognizes that the proposed procedures for expediting refunded allowances would create a significant reporting and administrative burden for both industry and the Agency. Therefore, EPA will maintain the existing procedure in which companies submit documents only once to obtain the refund of consumption allowances.

EPA received a comment challenging the proposed elimination of consumption allowances from inter-Party trades (59 FR 56288). The comment points out that eliminating the consumption allowances from an inter-Party trade would not be a problem, if, as under the December 10, 1993 final rule, § 82.9(b)(1)(vi), the controlled substance produced in the U.S. were exported to the Party from whom the allowances were received. If EPA were to eliminate the need for consumption allowances in inter-Party trades, and the controlled substance returned to the Party from whom the allowances were received, the global limit on production of controlled substances would be maintained. The requirement that material be exported to the country from whom allowances were traded is a vestige of the original Montreal Protocol and was eliminated by the London Amendments.

During the 1994 control period, several U.S. companies asked to rationalize global production through inter-Party trades with a waiver that material not be required to return to the country from whom the allowances were received. The U.S. companies wanted to receive trades from foreign companies and produce the controlled substances for U.S. customers of those foreign firms. The benefit of these less restricted inter-Party trades would be more geographically rational production of controlled substances on a global basis with lower transport costs and energy use. Unfortunately, the requirement in § 82.9(b)(1)(vi), that material must be exported to the country from whom the allowances were received blocked these inter-Party trades in 1994. EPA proposed eliminating this requirement in the November 10, 1994, notice of proposed rulemaking (59 FR 56290).

With today's action, EPA creates a dual system for inter-Party trades in order to allow U.S. companies greater flexibility in meeting market demand in the U.S. and other countries while maintaining the global limit on production and consumption of controlled substances. The dual system for inter-Party trades allows industrial rationalization, and maintains U.S. obligations under the Protocol. The two-tier system for inter-Party trades distinguishes between: U.S. companies wishing to receive production allowances in order to produce and subsequently export to the country from

whom the allowances were received, and U.S. companies wishing to receive production allowances and produce for the U.S. domestic market or for sale to another Party to the Protocol. In order to maintain United States obligations under the Protocol, EPA would require companies to expend their consumption allowances as allocated under § 82.6 and § 82.7 if receiving production allowances from an inter-Party trade for production of controlled substances to be sold in the U.S., or to be sold to a third country (Party to the Protocol). To produce for sale in the U.S. or to another Party, the company would expend production allowances from the inter-Party trade and expend consumption allowances that were allocated as part of the Allowance Program in section § 82.6 and § 82.7. Although counterintuitive, the expenditure of production allowances received from a Party and the expenditure of consumption allowances allocated under the Allowance Program would maintain the global balance of production and consumption of ozone-depleting substances as restricted by the Montreal Protocol. The regulatory language under § 82.10(c) that states, ''a request for production allowances shall also be considered a request for consumption allowances,'' will not apply to inter-Party trades of production allowances for the production of controlled substances to be sold in the U.S. or to be sold to another Party to the Protocol.

The dual-tier system for inter-Party trades of production allowances applies to methyl bromide beginning in the 1995 control period and extends until January 1, 2001.

Under the current regulation, a person in the United States may receive production allowances from a Party to the Protocol in an inter-Party trade (under the Protocol this is called industrial rationalization). The request for an increase in production allowances through an inter-Party trade is considered, under the current regulation, a request for consumption allowances. The U.S. company that receives the allowances from the other Party expends the production and consumption allowances to produce a controlled substance. The controlled substances produced with the traded allowances are exported to the Party from whom the allowances were traded. The U.S. company expends consumption allowances in the production of the controlled substance for an inter-Party trade and then asks EPA for a ''refund'' of these consumption allowances because the controlled substance was exported.

3. Administrative Changes to Production Allowance Requirements for Exports That Are Transformed or Destroyed

With today's action, EPA is creating procedures for the refund of production allowances when a person expends production allowances in the manufacture of a controlled substance for export to a Party for uses that result in transformation or destruction. EPA proposed (59 FR 56289) expediting the ''refund'' of production allowances, but is not adopting this proposal, because it is too great a reporting and administrative burden as discussed above for the refund of consumption allowances.

The refund procedure pertains to the production of class I controlled substances for only the 1995 control period, except for methyl bromide. For methyl bromide, the refund of expended production allowances for quantities exported to Parties that are certified to be transformed or destroyed would also begin January 1, 1995, but extend until January 1, 2001. As with the procedures for refunding consumption allowances, a person in the U.S. producing or purchasing a class I controlled substance may, upon export to a Party for certified subsequent transformation or destruction, request from EPA a ''refund'' of production allowances with a certification that the production allowances were expended in the production of the substance. To ensure that the controlled substance is in fact transformed or destroyed by the recipient in a Party country, the Agency requires the U.S. exporter to obtain a signed IRS certificate of intent to transform or a destruction verification (as under § 82.13(k)) from the foreign transformer or destroyer.

*Response to Comments:* EPA received five comments supporting the elimination of requirements to expend allowances if the controlled substance is explicitly produced for export to be transformed or destroyed. The commenters suggested that all controlled substances that are transformed, both domestically and overseas, be treated similarly. A commenter stated that the Protocol does not make a distinction between transformation (or destruction), whether it occurs domestically or overseas.

The prior regulation, published in the **Federal Register** on December 10, 1993, required that allowances be expended for the production of controlled substances that are exported and transformed or destroyed. Under this prior regulation, production allowances were expended and not refunded. With today's action, EPA is refunding the expended production and consumption allowances if the substance is explicitly exported for transformation or destruction. EPA considers the refund of production allowances to be a significant benefit for producers of class I controlled substances during the final control period before the phaseout.

EPA received two comments that requested an explicit waiver of liability for a producer or importer who sells a controlled substance for transformation or destruction in the event the controlled substance is not transformed or destroyed. Given EPA's requirements for transformers or destroyers of controlled substances, the producer or importer who sells the substance is not liable as long as they receive an IRS certificate of intent to transform or a destruction verification.

*Additional Actions:* With today's action, EPA is standardizing the reporting requirements for controlled substances that are transformed or destroyed both domestically and overseas. Each quarterly producer's or importer's report must be accompanied by the IRS certificates of intent to transform or destruction verifications (as under § 82.13(k)) from the transformers or destroyers to whom controlled substances were sold. EPA is unwilling to further relax requirements for production during the last control period (1995 calendar year), in part due to difficulties companies had during 1994 in complying with the reporting requirements for transformation. The regulation requires that companies submit IRS certificates of intent to transform with quarterly production reports. In 1994, few companies submitted the IRS certification of intent to transform or the destruction verification with their quarterly reports. By standardizing the reporting requirement for controlled substances transformed or destroyed both domestically and overseas, EPA hopes to improve compliance by companies during the 1995 control period. The procedures for submitting the IRS certification and the destruction verification change slightly with today's rule and are described in H., ''Clarification of Reporting and Recordkeeping Requirements.''

After the January 1, 1996 phaseout, production and consumption allowances will not be required to produce class I controlled substances for domestic or foreign transformation or destruction. After January 1, 1996, EPA will permit production for transformation or destruction domestically or overseas as long as companies comply with strict reporting

requirements, including the submission of IRS certificates of intent to transform and destruction verifications (see H., ''Clarification of Reporting and Recordkeeping Requirements'').

4. Treatment of Controlled Substances Remaining in Emptied Containers, i.e.''Heels''

With today's action, EPA exempts heels from the consumption allowance requirements for imports beginning in the 1995 control period if certain conditions are met. Heels were described in detail in the proposed rulemaking and are now defined in the regulation (59 FR 56289). Heels are exempted from the consumption allowance requirements for imports if the company bringing the heel into the United States certifies that the residual amount is less than 10 percent of the volume of the container and will remain in the container and be included in a future shipment, or recovered for transformation, destruction or a non-emissive use.

The industry rule-of-thumb is that a heel is up to ten percent of the volume of the container. Therefore, EPA is requiring that containers returning to the United States with more than ten percent of their volume in controlled substance, even if labelled as a heel, be required to expend consumption allowances to import the substance until January 1, 1996.

With today's action, EPA requires a person who brings heels back to the United States to report quarterly the quantity of their returned heels. In addition, the person must report at the end of the control period on the final disposition of each shipment of heels. The Agency will review this information to determine if returned heels are cause for concern due to the volume and frequency of occurrence.

*Response to Comments:* Most comments EPA received supported the proposed requirements for heels (59 FR 56289) as long as the reporting requirements were stringent enough to prevent illegal import abuses. Only one company objected to the proposed exemption for heels from the import requirements, suggesting that it would provide another opportunity for illegal imports. The commenter claimed that under the proposal, heels would be under-reported and people would fraudulently label their imports as heels to avoid the tax.

EPA believes the stringent reporting requirements for heels, the *de minimis* provision (no greater than 10 percent of the volume of a container is considered a heel), and the requirement for non-emissive disposition of heels eliminates the incentives to fraudulently import controlled substances as heels.

5. Clarification of the Definition of Transhipment

EPA received comments on the proposed clarification of transhipment (59 FR 56289) that strongly recommended action to deter the abuse of transhipment in illegally importing controlled substances. The proposal only clarified the definition of transhipment and did not address the abuse of the transhipment provision for illegal imports. In response to the comments, EPA is issuing a separate, parallel notice of proposed rulemaking to address the abuse of the current transhipment provision to illegally divert transhipped material into U.S. commerce.

EPA received a comment suggesting the use of the phrase, U.S. interstate commerce, in place of the phrase, U.S. jurisdiction. With today's action, EPA maintains the word jurisdiction in accordance with the definition of import in the CAA. EPA received no other adverse comment on the clarification of transhipment.

6. Provision for an Account Reconciliation Period Through Inter-Pollutant Transfers

With today's action, EPA is creating a 45-day period for reconciliation of allowances after the last day of the 1995 control period. During the 45-day reconciliation period, a person may make inter-pollutant transfers of allowances from the previous control period for class I controlled substances as defined in § 82.12 of the current regulation. Inter-pollutant transfers of controlled substances can only be made between controlled substances in the same Group as listed in appendices A and F of subpart A. In addition, the inter-pollutant transfer must be authorized by EPA and will include a one percent offset.

*Response to Comments:* EPA received many comments supporting the creation of a period for reconciliation of allowances after the last day of a control period. In addition to their support for the proposed 45-day period for inter-pollutant transfers, EPA received five comments suggesting inter-company transfers be permitted. Two additional comments suggested inter-Party trades be allowed during the reconciliation period.

EPA believes that changes in today's action to permit either inter-company transfers or inter-Party trades in the reconciliation period would undermine the integrity of the prohibitions in § 82.4 that require a person to have, at any time, the allowances to produce or import controlled substances. Allowing inter-company transfers or inter-Party trades during the reconciliation period would effectively eliminate the requirement that a company have allowances to produce or import, thereby eliminating the basis for EPA enforcement of the regulation. Today's action permits inter-pollutant transfers at the end of the control period, which are intra-company adjustments to the balance of allowances for that control period, through paper accounting rather than an extension of the control period for trades, exports or transfers between companies.

7. Additional Clarifications

*a. Unintended By-Products of Research and Development.* EPA adds to the list of inadvertent or coincidental creations of insignificant quantities of the listed substances, in the definition of controlled substance, the production of unintended by-products of research and development applications.

*Response to Comments:* EPA received only supportive comments on the proposal to add the unintended by-products of research and development applications to the list of inadvertent or coincidental creations of insignificant quantities so that these unintended by-products be exempted from the definition of controlled substances. The Agency continues to reserve the right to require a person to destroy the unintended by-products of research and development applications if they are determined to be greater than insignificant quantities.

*b. Carbon Tetrachloride Baseline Consumption Allowances.* With today's action, EPA corrects a typographical error made in the proposal (59 FR 56300). In § 82.6, the apportionment of baseline consumption allowances shifted the order of consumption allowances allocated to the various companies. Today's action maintains the baseline consumption allowances apportioned under the current regulation published on December 10, 1993 in the **Federal Register**.

8. Clarification of Reporting and Recordkeeping Requirements

*a. Reporting and Recordkeeping for Destruction and Transformation Credits.* With today's action, an eligible person, if they wish to obtain destruction and transformation credits as defined above in A.1., ''Post-Phaseout Requirements for Transformation and Destruction of Controlled Substances,'' must submit to EPA a request for credits when they have had a quantity of controlled substance taken from a U.S. use system

destroyed or transformed. The request for credits should include:

- The identity and address of the person;
- The name, quantity and volume of controlled substance destroyed or transformed;
- A copy of the invoice or receipt documenting the sale or transfer of the controlled substance to the person;
- A certification of the previous use of the controlled substance;
- For destruction credits, a certification that the controlled substance was destroyed and a certification of the efficiency of the destruction process; and
- For transformation credits, an IRS certificate of feedstock use or transformation of the controlled substance.

EPA will review the information submitted in a request for destruction and transformation credits and determine whether or not to issue credits equal to the calculated level of material destroyed or transformed minus the 15 percent offset. EPA received no comments on the reporting requirements for granting destruction and transformation credits.

*b. Reporting and Recordkeeping for Importers.* With today's action, EPA requires that importers of used, recycled or reclaimed controlled substances maintain records on the items included in Section B, ''Imports of Used Controlled Substances,'' of this preamble. In addition, EPA continues to require that all importers submit quarterly reports. EPA requires that all importers differentiate, in their quarterly reports, between quantities of imported controlled substances that are newly produced, and quantities of imported controlled substances that are used, recycled or reclaimed in accordance with the reporting requirements of the prior regulation published in the **Federal Register** on December 10, 1993.

Under the current rule, EPA requires that importers be prepared to verify that the company has consumption allowances when entering a newly produced class I controlled substance into the United States. EPA also requires importers be prepared to provide the documentation as listed in Section B of this preamble, to verify the previous owner and the previous use when entering a controlled substance claimed to be used, recycled or reclaimed into the United States. After January 1, 1995, an importer must provide to EPA, as part of the petition to import used, recycled or reclaimed controlled substances, the following information as listed in section B., ''Imports of Used Controlled Substances:

- The name and quantity of the used controlled substance to be imported (including material that has been recycled or reclaimed),
- The name and address of the importer, the importer I.D. number, the contact person, and the phone and fax numbers,
- Name and address of the source(s) of the used controlled substance, including a description of the previous use(s), when possible;
- Name and address of the exporter and/or foreign owner of the material,
- The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical, where available,
- The intended future use of the used controlled substance,
- The name, address and contact person of the U.S. reclamation facility, where applicable,
- A certification that the purchaser of the used controlled substance being imported is liable for payment of the tax.

A petition to import a class I controlled substance that was reclaimed overseas must also include the name and address of the foreign reclamation facility, as well as the contact person at the facility and their phone and fax number. The name of the foreign reclamation facility should be included with the information listed above accompanying the import through U.S. Customs.

If the imported used controlled substance is intended to be sold as a refrigerant, EPA also requires that the importer identify the name and address of the reclaimer to whom the refrigerant will be sent to comply with the standard required in § 82.152(g). EPA regulation published in the **Federal Register** on Friday August 19, 1994, (59 FR 42949) states that, ''no person may sell or offer for sale for use as a refrigerant any class I or class II controlled substance consisting wholly or in part of used refrigerant unless * * * it has been reclaimed as defined in § 82.152(g).''

*Response to Comments:* EPA received many comments on the proposed actions to address illegal imports of controlled substances. The commenters stated a willingness to accept new reporting requirements in order to stem the flow of illegally imported controlled substances.

One commenter stated that chemical testing of imported materials would not provide EPA with reliable evidence that the controlled substance had been taken from a use system. A lab test would not be able to distinguish between a contaminated newly produced controlled substance, a contaminated ''off-spec'' newly produced substance, or a substance taken from a use system. Therefore, the commenters stated that this reporting requirement would be an unnecessary expense and burden. EPA agrees with these arguments and has not included lab testing of imported used controlled substance in today's action.

Another commenter claimed it would be difficult to obtain the proposed information requirement on the type of machine utilized to recover the controlled substance. EPA recognizes the difficulty in identifying and describing recovery machinery and has not included it in the reporting requirement for used imported controlled substances.

*c. Reporting and Recordkeeping for Article 5 Exports. Today's Action:* EPA requires companies to submit with their producer's quarterly report the amount of controlled substance produced with expended Article 5 allowances and exported to Article 5 countries during the quarter. Today's change of name from potential production allowances to Article 5 allowances does not change the quarterly reporting requirements. However, today's action does eliminate the need to convert allowances.

Today's amendment to the recordkeeping and reporting requirement anticipates the phaseout of class I controlled substances (except methyl bromide) in January 1, 1996. In 1995, all class I controlled substances produced for export to Article 5 countries will be reported in the producer's quarterly report. Beginning January 1, 1996, EPA will simplify the quarterly reporting, so that producers indicate which of the production exceptions apply (i.e., essential-use allowances, Article 5 allowances, destruction and transformation credits, transformation or destruction) for a given quantity of controlled substance, with relevant information to explain the justification for the exception.

*Response to Comments:* EPA received five comments supporting the changes in the reporting requirements for Article 5 allowances that eliminate the need to convert potential production allowances to production allowances. The commenters also indicated a need to clarify in the regulatory language how Article 5 allowances will be used in the production of controlled substances. The commenters pointed out that the regulatory language should be consistent with the preamble. With today's action EPA makes the changes to the regulatory language to ensure correspondence with today's preamble.

*d. Reporting and Recordkeeping for the Production Allowance Requirements for Exports that are Transformed or Destroyed. Today's Action:* EPA requires the submission of an IRS certificate of intent to transform or a destruction verification (as outlined in § 82.13(k)), during the 1995 control period, if a person is requesting the refund of production allowances for material exported to be transformed or destroyed. If requesting a refund of production allowances, the producer must submit the IRS certificate or destruction verification for each shipment.

Starting in the 1995 control period, EPA requires all producers and importers to submit with quarterly reports an IRS certificate of intent to transform or a destruction verification (as in § 82.13(k)) from transformers or destroyers, both domestic and of a foreign Party, who purchase controlled substances.

*Response to Comments:* EPA received comments that claimed the reporting requirements for submission of IRS certificates to transform and destruction verifications were burdensome. In response to the comments, EPA is permitting a one-time-per-year submission of an IRS certificate of intent to transform or a one-time-per-year submission of a destruction verification from each individual transformer or destroyer that purchases the same controlled substances throughout the year that will be transformed or destroyed during that year. After the first submission of an IRS certificate for a particular transformer, or the first submission of a destruction verification for a particular destroyer, whether the transformer or destroyer is domestic or foreign, the U.S. producer or importer may list the quantities of subsequent shipments sold to the transformer or destroyer, referencing the original certificate or verification.

*e. Reporting and Recordkeeping for Heels. Today's Action:* With today's action, EPA requires a person who brings heels back to the United States to report quarterly a list of the quantity of their returned heels, shipment-by-shipment. The quarterly submission must list the quantity of the heel in each shipment and the volume of the container in which the heel returned to the United States. The submission of the list of heels must also include a certificate that the residual amount will remain in the container and be included in a future shipment, or be recovered for transformation, destruction or a non-emissive use. Due to concerns about illegal imports of controlled substances, the Agency determined that quarterly reporting on heels is necessary to closely monitor for possible abuses of today's provision.

EPA requires all companies that brought heels into the United States to report, at the end of the control period, on the final disposition of each shipment of heels. The Agency will review this information to determine if returned heels are cause for concern due to the volume and frequency of occurrence and potential abuse.

*f. Reporting Requirements for Class II Controlled Substances (HCFCs).* With today's action, EPA includes class II controlled substances that are transformed or destroyed in the reporting requirement of § 82.13(n). In the proposal, EPA inadvertently excluded class II material that is transformed or destroyed from the reporting requirement.

## III. Summary of Supporting Analysis

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency originally published an RFA to accompany the August 12, 1998 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and halons. That RFA was also updated as appendix G of the Regulatory Impact Analysis for the regulations implementing the phaseout schedule of section 604 of the Clean Air Act Amendments of 1990. The Addendum to the Regulatory Impact Analysis was further updated in 1993 to examine the impact of the acceleration of the phaseout and the phaseout of HCFCs on small businesses. The analysis in the Addendum indicated that the actions were not expected to have a substantial impact on small entities.

EPA believes that any impact that today's amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Sections 604 and 606. Although almost all business participants in the phaseout program for ozone-depleting substances are large businesses, today's amendment reduces reporting or recordkeeping burdens that might possibly impact small businesses. Therefore, the amendment is expected to have minimal if any impact on small entities.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulation promulgated in this notice will not have any additional negative economic impacts on any small entities.

### *C. Paperwork Reduction Act*

The information collection requirements in this final rule were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* and assigned control number, OMB No. 2060–0170. An Information Collection Request document has been prepared by EPA (ICR No. 1432.15) and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. EPA, 401 M St., SW., (2136), Washington, DC 20460 or by calling (202) 260–2740.

The information collection requirements for this final rule has an estimated reporting burden averaging 23.3 hours per response. This estimate includes time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

Send comments regarding the burden estimate of any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, U.S. EPA, 401 M St., SW., (2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*D. Enhancing the Intergovernmental Partnership Under Executive Order 12875*

In compliance with Executive Order 12875 we have involved state, local, and tribal governments in the development of this rule to the extent they are affected by these requirements. EPA is conducting an outreach program to facilitate the transition for state, local and tribal governments to ozone-friendly alternatives.

*E. Unfunded Mandate Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

This rule amends the accelerated phaseout rule with the net effect of reducing the regulatory burden for regulated entities. Because this amendment to the rule is estimated to result in the expenditure of less than $100 million in any one year by state, local, and tribal governments, or the private sector, the Agency has neither prepared a budgetary impact statement nor addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: April 19, 1995.

**Carol Browner,**

*Administrator.*

40 CFR part 82 is amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7671–7671q.

2. Subpart A is revised to read as follows:

### Subpart A—Production and Consumption Controls

Sec.
82.1 Purpose and scope.
82.2 Effective date.
82.3 Definitions.
82.4 Prohibitions.
82.5 Apportionment of baseline production allowances.
82.6 Apportionment of baseline consumption allowances.
82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.
82.8 Grant and phased reduction of baseline production and consumption allowances for class II controlled substances. [Reserved]
82.9 Availability of production allowances in addition to baseline production allowances.
82.10 Availability of consumption allowances in addition to baseline consumption allowances.
82.11 Exports to Article 5 Parties.
82.12 Transfers.
82.13 Recordkeeping and reporting requirements.

**Appendix A to Subpart A—Class I Controlled Substances**

**Appendix B to Subpart A—Class II Controlled Substances**

**Appendix C to Subpart A—Parties to the Montreal Protocol**

**Appendix D to Subpart A—Harmonized Tariff Schedule**

Description of Products That May Contain Controlled Substances in Appendix A, Class I, Groups I and II.

**Appendix E to Subpart A—Article 5 Parties**

**Appendix F to Subpart A—Listing of Ozone-Depleting Chemicals**

**Appendix G to Subpart A—UNEP Recommendations for Conditions**

Applied to Exemption for Laboratory and Analytical Uses.

**Appendix H to Subpart A—Clean Air Act Amendments of 1990**

Phaseout Schedule for Production of Ozone-Depleting Substances.

### Subpart A—Production and Consumption Controls

#### § 82.1 Purpose and scope.

(a) The purpose of the regulations in this subpart is to implement the Montreal Protocol on Substances that Deplete the Ozone Layer and sections 603, 604, 605, 606, 607 and 616 of the Clean Air Act Amendments of 1990, Public Law 101–549. The Protocol and section 604 impose limits on the production and consumption (defined as production plus imports minus exports, excluding transhipments and used controlled substances) of certain ozone-depleting substances, according to specified schedules. The Protocol also requires each nation that becomes a Party to the agreement to impose certain restrictions on trade in ozone-depleting substances with non-Parties.

(b) This subpart applies to any person that produces, transforms, destroys, imports or exports a controlled substance or imports a controlled product.

#### § 82.2 Effective date.

(a) The regulations under this subpart take effect May 10, 1995. Amendments to the requirements specifically addressing 1995 apply to the entire control period.

(b) The regulations under this subpart that were effective prior to May 10, 1995, continue to apply for purposes of enforcing the provisions that were applicable prior to January 1, 1995.

#### § 82.3 Definitions.

As used in this subpart, the term:

*Administrator* means the Administrator of the Environmental Protection Agency or his authorized representative.

*Article 5 allowances* means the allowances apportioned under § 82.9(a).

*Baseline consumption allowances* means the consumption allowances apportioned under § 82.6.

*Baseline production allowances* means the production allowances apportioned under § 82.5.

*Calculated level* means the weighted amount of a controlled substance

determined by multiplying the amount (in kilograms) of the controlled substance by that substance's ozone depletion potential (ODP) weight listed in appendix A or appendix B to this subpart.

*Class I* refers to the controlled substances listed in appendix A to this subpart.

*Class II* refers to the controlled substances listed in appendix B to this subpart.

*Completely destroy* means to cause the expiration of a controlled substance at a destruction efficiency of 98 percent or greater, using one of the destruction technologies approved by the Parties.

*Complying with the Protocol,* when referring to a foreign state not Party to the 1987 Montreal Protocol, the London Amendments, or the Copenhagen Amendments, means that the non-Party has been determined as complying with the Protocol, as indicated in appendix C to this subpart, by a meeting of the Parties as noted in the records of the directorate of the United Nations Secretariat.

*Consumption* means the production plus imports minus exports of a controlled substance (other than transhipments, or used controlled substances).

*Consumption allowances* means the privileges granted by this subpart to produce and import class I controlled substances; however, consumption allowances may be used to produce class I controlled substances only in conjunction with production allowances. A person's consumption allowances are the total of the allowances obtained under §§ 82.6 and § 82.7 and 82.10, as may be modified under § 82.12 (transfer of allowances).

*Control period* means the period from January 1, 1992 through December 31, 1992, and each twelve-month period from January 1 through December 31, thereafter.

*Controlled product* means a product that contains a controlled substance listed as a Class I, Group I or II substance in appendix A to this subpart. Controlled products include, but are not limited to, those products listed in appendix D to this subpart.

Controlled products belong to one or more of the following six categories of products:

(1) Automobile and truck air conditioning units (whether incorporated in vehicles or not);

(2) Domestic and commercial refrigeration and air-conditioning/heat pump equipment (whether containing controlled substances as a refrigerant and/or in insulating material of the product), e.g. Refrigerators, Freezers, Dehumidifiers, Water coolers, Ice machines, Air-conditioning and heat pump units;

(3) Aerosol products, except medical aerosols;

(4) Portable fire extinguishers;

(5) Insulation boards, panels and pipe covers;

(6) Pre-polymers.

*Controlled substance* means any substance listed in appendix A or appendix B to this subpart, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Thus, any amount of a listed substance in appendix A or appendix B to this subpart that is not part of a use system containing the substance is a controlled substance. If a listed substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment in order to realize its intended use, the listed substance or mixture is a ''controlled substance.'' The inadvertent or coincidental creation of insignificant quantities of a listed substance in appendix A or appendix B to this subpart; during a chemical manufacturing process, resulting from unreacted feedstock, from the listed substance's use as a process agent present as a trace quantity in the chemical substance being manufactured, or as an unintended byproduct of research and development applications, is not deemed a controlled substance. Controlled substances are divided into two classes, Class I in appendix A to this subpart, and Class II listed in appendix B to this subpart. Class I substances are further divided into seven groups, Group I, Group II, Group III, Group IV, Group V, Group VI, and Group VII, as set forth in appendix A to this subpart.

*Copenhagen Amendments* means the Montreal Protocol on Substances That Deplete the Ozone Layer, as amended at the Fourth Meeting of the Parties to the Montreal Protocol in Copenhagen in 1992.

*Destruction* means the expiration of a controlled substance to the destruction efficiency actually achieved, unless considered completely destroyed as defined in this section. Such destruction does not result in a commercially useful end product and uses one of the following controlled processes approved by the Parties to the Protocol:

(1) Liquid injection incineration;

(2) Reactor cracking;

(3) Gaseous/fume oxidation;

(4) Rotary kiln incineration; or

(5) Cement kiln.

*Destruction Credits* means those privileges that may be obtained under § 82.9 to produce controlled substances.

*Essential-Uses* means those uses of controlled substances designated by the Parties to the Protocol to be necessary for the health and safety of, or critical for the functioning of, society; and for which there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health. Beginning January 1, 2000 (January 1, 2002 for methyl chloroform) the essential use designations for class I substances must be made in accordance with the provisions of the Clean Air Act Amendments of 1990.

*Essential-Use Allowances* means the privileges granted by § 82.4(r) to produce class I substances, effective January 1, 1996 until January 1, 2000, as determined by allocation decisions made by the Parties to the Montreal Protocol and in accordance with the restrictions delineated in the Clean Air Act Amendments of 1990.

*Export* means the transport of virgin or used controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

*Exporter* means the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country.

*Facility* means any process equipment (e.g., reactor, distillation column) used to convert raw materials or feedstock chemicals into controlled substances or consume controlled substances in the production of other chemicals.

*Foreign state* means an entity which is recognized as a sovereign nation or country other than the United States of America.[1]

*Foreign state not Party to* or *Non-Party* means a foreign state that has not deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol, the London Amendments, or of the Copenhagen Amendments, as specified.

*Heel* means the amount of a controlled substance that remains in a container after it is discharged or off-loaded (that is no more than ten percent of the volume of the container) and that the person owning or operating the container certifies the residual amount

[1] Taiwan is not considered a foreign state.

will remain in the container and be included in a future shipment, or be recovered for transformation, destruction or a non-emissive purpose.

*Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exemptions:

(1) Off-loading used or excess controlled substances or controlled products from a ship during servicing,

(2) Bringing controlled substances into the U.S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin, and

(3) Bringing a controlled product into the U.S. when transported in a consignment of personal or household effects or in a similar non-commercial situation normally exempted from U.S. Customs attention.

*Importer* means any person who imports a controlled substance or a controlled product into the United States. ''Importer'' includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term also includes, as appropriate:

(1) The consignee;

(2) The importer of record;

(3) The actual owner; or

(4) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

*London Amendments* means the Montreal Protocol, as amended at the Second Meeting of the Parties to the Montreal Protocol in London in 1990.

*Montreal Protocol* means the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by the Parties thereto and amendments that have entered into force.

*1987 Montreal Protocol* means the Montreal Protocol, as originally adopted by the Parties in 1987.

*Nations complying with, but not joining, the Protocol* means any nation listed in appendix C, annex 2, to this subpart.

*Party* means any foreign state that is listed in appendix C to this subpart (pursuant to instruments of ratification, acceptance, or approval deposited with the Depositary of the United Nations Secretariat), as having ratified the specified control measure in effect under the Montreal Protocol. Thus, for purposes of the trade bans specified in § 82.4(k)(2) pursuant to the London Amendments, only those foreign states that are listed in appendix C to this subpart as having ratified both the 1987 Montreal Protocol and the London Amendments shall be deemed to be Parties.

*Person* means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

*Plant* means one or more facilities at the same location owned by or under common control of the same person.

*Production* means the manufacture of a controlled substance from any raw material or feedstock chemical, but does not include:

(1) The manufacture of a controlled substance that is subsequently transformed;

(2) The reuse or recycling of a controlled substance;

(3) Amounts that are destroyed by the approved technologies; or

(4) Amounts that are spilled or vented unintentionally.

*Production allowances* means the privileges granted by this subpart to produce controlled substances; however, production allowances may be used to produce controlled substances only in conjunction with consumption allowances. A person's production allowances are the total of the allowances obtained under §§ 82.7, 82.5 and 82.9, and as may be modified under § 82.12 (transfer of allowances).

*Transform* means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes.

*Transformation Credits* means those privileges that may be obtained under § 82.9 to produce controlled substances.

*Transhipment* means the continuous shipment of a controlled substance from a foreign state of origin through the United States, its territories, to a second foreign state of final destination, as long as the shipment does not enter into United States jurisdiction.

*Unexpended Article 5 allowances* means Article 5 allowances that have not been used. At any time in any control period a person's unexpended Article 5 allowances are the total of the level of Article 5 allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced in that control period until that time.

*Unexpended consumption allowances* means consumption allowances that have not been used. At any time in any control period a person's unexpended consumption allowances are the total of the level of consumption allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported (not including transhipments and used controlled substances) in that control period until that time.

*Unexpended destruction and transformation credits* means destruction and transformation credits that have not been used. At any time in any control period a person's unexpended destruction and transformation credits are the total of the level of destruction and transformation credits the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported (not including transhipments and used controlled substances) in that control period until that time.

*Unexpended essential-use allowances* means essential-use allowances that have not been used. At any time in any control period a person's unexpended essential-use allowances are the total of the level of essential-use allowances the person has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced or imported (not including transhipments and used controlled substances) in that control period until that time.

*Unexpended production allowances* means production allowances that have not been used. At any time in any control period a person's unexpended production allowances are the total of the level of production allowances he has authorization under this subpart to hold at that time for that control period, minus the level of controlled substances that the person has produced in that control period until that time.

*Used controlled substances* means controlled substances that have been recovered from their intended use systems (may include controlled substances that have been, or may be subsequently, recycled or reclaimed).

**§ 82.4 Prohibitions.**

(a) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2001, for class I, Group VI controlled substances, no person may produce, at any time in any control period, (except that are

transformed or destroyed domestically or by a person of another Party) in excess of the amount of unexpended production allowances or unexpended Article 5 allowances for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(b) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential-use allowances or exemptions under this section, the amount of unexpended Article 5 allowances as allocated under § 82.9, or the amount of conferred unexpended destruction and transformation credits as obtained under § 82.9 for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

(c) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2001, for class I, Group VI controlled substances, no person may produce or (except for transhipments, heels, or used controlled substances) import, at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended consumption allowances held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production or importation (other than transhipments, heels or used controlled substances) constitutes a separate violation of this subpart.

(d) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, no person may import (except for transhipments, heels, or used controlled substances), at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended essential-use allowances or exemption as allocated under this section held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess importation (other than transhipments, heels or used controlled substances) constitutes a separate violation of this subpart.

(e) Effective January 1, 1996, no person may place an order for the production or importation of the class I controlled substance, at any time in any control period, in excess of the amount of unexpended essential-use allowances, or unexpended destruction and transformation credits, held by that person under the authority of this subpart at that time for that control period. No person may place an order for the production or importation of a class I controlled substance with essential-use allowances or destruction and transformation credits, at any time in any control period, other than for the class I controlled substance(s) for which they received essential-use allowances as under paragraph (r) of this section, or for which they were nominated for that control period by the U.S. Government to the Protocol for an essential-use exemption. Every kilogram of excess production or importation ordered constitutes a separate violation of this subpart.

(f) Effective January 1, 1996, the U.S. total production and importation of a class I controlled substance (except Group VI) as allocated under this section for essential-use allowances and exemptions, and as obtained under § 82.9 for destruction and transformation credits, may not, at any time, in any control period until January 1, 2000, exceed the percent limitation of baseline production in Appendix H of this subpart, as set forth in the Clean Air Act Amendments of 1990. No person shall cause or contribute to the U.S. exceedance of the national limit for that control period.

(g) In addition to total production permitted under paragraph (f) of this section, effective January 1, 1996, for class I, Group I, Group III, Group IV and Group V controlled substances, and effective January 1, 1995, for class I, Group II, a person may, at any time, in any control period until January 1, 2000, produce 10 percent of baseline production as apportioned under § 82.5 for export to Article 5 countries. No person may, at any time, in any control period until January 1, 2000, produce class I, Group I, Group II, Group III, Group IV, and Group V controlled substances for export to Article 5 countries in excess of the Article 5 allowances allocated under § 82.9(a). No person may sell in the U.S. any class I controlled substance produced explicitly for export to an Article 5 country.

(h) Effective January 1, 1995, no person may import, at any time in any control period, a heel of any class I controlled substance that is greater than 10 percent of the volume of the container in excess of the amount of unexpended consumption allowances, or unexpended destruction and transformation credits held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess importation constitutes a separate violation of this subpart.

(i) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, without complying with the petition procedures as under § 82.13(g)(2) and (3).

(j) Prior to January 1, 1996, for all Groups of class I controlled substances, and prior to January 1, 2001, for class I, Group VI controlled substances, a person may not use production allowances to produce a quantity of a class I controlled substance unless that person holds under the authority of this subpart at the same time consumption allowances sufficient to cover that quantity of class I controlled substances nor may a person use consumption allowances to produce a quantity of class I controlled substances unless the person holds under authority of this subpart at the same time production allowances sufficient to cover that quantity of class I controlled substances. However, prior to January 1, 1996, for all class I controlled substances, and prior to January 1, 2001, for class I, Group VI controlled substances, only consumption allowances are required to import, with the exception of transhipments, heels and used controlled substances. Effective January 1, 1996, for all Groups of class I controlled substances, except Group VI, only essential-use allowances or exemptions are required to import class I controlled substances, with the exception of transhipments, heels and used controlled substances.

(k) Every kilogram of a controlled substance, and every controlled product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart, thus no person may:

(l) Import or export any quantity of a controlled substance listed in Class I, Group I or Group II, in Appendix A to this subpart from or to any foreign state not listed as a Party to the 1987 Montreal Protocol unless that foreign state is complying with the 1987 Montreal Protocol (See Appendix C, Annex 2 of this subpart);

(2) Import or export any quantity of a controlled substance listed in Class I, Group III, Group IV or Group V, in Appendix A to this subpart, from or to any foreign state not Party to the London Amendments (as noted in appendix C, Annex l, to this subpart), unless that foreign state is complying

with the London Amendments (as noted in appendix C, Annex 2, to this subpart); or

(3) Import a controlled product, as noted in appendix D, Annex 1 to this subpart, from any foreign state not Party to the 1987 Montreal Protocol (as noted in appendix C, Annex 1, to this subpart), unless that foreign state is complying with the Protocol (as noted in appendix C, Annex 2, to this subpart).

(l) Effective January 1, 2003, no person may produce HCFC–141b except in a process resulting in its transformation, use in a process resulting in destruction, or for exceptions stated in paragraph (s) of this section.

(m) Effective January 1, 2003, no person may import HCFC–141b except for use in a process resulting in its transformation, use in a process resulting in destruction, or for exceptions stated in paragraph (s) of this section.

(n) Effective January 1, 2010, no person may produce or consume (as defined under § 82.3 HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction, for use in equipment manufactured prior to January 1, 2010, or for exceptions stated in paragraph (s) of this section in excess of baseline allowances allocated in § 82.5(h) and § 82.6(h).

(o) Effective January 1, 2020, no person may produce or consume (as defined under § 82.3 of this subpart) HCFC–22 or HCFC–142b for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction or for exceptions stated in paragraph (s) of this section.

(p) Effective January 1, 2015, no person may produce or consume (as under defined under § 82.3) class II substances not previously controlled, for any purpose other than for use in a process resulting in its transformation, use in a process resulting in their destruction, as a refrigerant in equipment manufactured before January 1, 2020, or for exceptions stated in paragraph (s) of this section, in excess of baseline production and consumption levels defined in §§ 82.5(h) and 82.6(h).

(q) Effective January 1, 2030, no person may produce or consume class II substances, for any purpose other than for use in a process resulting in their transformation, use in a process resulting in their destruction, or for exceptions stated in paragraph (s) of this section.

(r) Effective January 1, 1996, essential-use allowances are apportioned to a person for the exempted production or importation of specified class I (except class I, Group VI) controlled substances.

(1) Essential-uses for the production or importation of controlled substances as agreed to by the Parties to the Protocol and subject to the periodic revision of the Parties are:

(i) Metered Dose Inhalers—aerosols.

(ii) Space Shuttle—solvents.

(iii) Laboratory and Analytical Applications (see Appendix G of this subpart).

(2) Persons in the following list are allocated essential-use allowances or exemptions for quantities of a specific class I controlled substance for a specific essential-use (the Administrator reserves the right to revise the allocations based on future decisions of the Parties).

| Company | Year | Chemical | Quantity (metric tons) |
|---|---|---|---|
| **(i) Metered Dose Inhalers—Aerosols** | | | |
| Members of the International Pharmaceutical & Aerosol Consortium (IPAC) [1]. | 1996 | CFC–11 | 749.8. |
| Abbot Laboratories | | CFC–12 | 2353.2. |
| Armstrong | | CFC–114 | 314.1. |
| Boehringer Ingelheim | 1997 | CFC–11 | 658.3. |
| Glaxo | | CFC–12 | 2166.5. |
| 3M | | CFC–114 | 311.4. |
| Rhone Poulenc Rorer | | | |
| Schering Corporation | | | |
| Miles Inc. | 1996 | CFC–12 | 5.1. |
| | | CFC–114 | 10.2. |
| | 1997 | CFC–12 | 5.2. |
| | | CFC–114 | 10.5. |
| Sankofi Winthrop, Inc. | 1996 | CFC–12 | 5.0. |
| | | CFC–114 | 19.4. |
| | 1997 | CFC–12 | 5.3. |
| | | CFC–114 | 21.2. |
| **(ii) Space Shuttle—Solvent** | | | |
| NASA/Thiokol | 1996 | Methyl Chloroform | 56.8. |
| | 1997 | Methyl Chloroform | 56.8. |
| **(iii) Laboratory and Analytical Applications** | | | |
| Global Exemption | 1996 | Class I (except Group IV) | No quantity specified. |
| | 1997 | .....do | Do. |

[1] IPAC consolidated requests for an essential use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.

(s) The following exemptions apply to the production and consumption restrictions under paragraphs (l), (m), (n), (o), (p) and (q) of this section:

(1) Medical Devices [Reserved]

(2) Exports to developing countries [Reserved]

**§ 82.5 Apportionment of baseline production allowances.**

Persons who produced controlled substances in Group I or Group II in 1986 are apportioned baseline production allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced controlled substances in Group III, IV, or V in 1989 are apportioned baseline production allowances as set forth in paragraphs (c), (d), and (e) of this section. Persons who produced controlled substances in Group VI and VII in 1991 are apportioned baseline allowances as set forth in paragraphs (f) and (g) of this section.

| *Controlled substance* | *Person* | *Allowances (kg)* |
|---|---|---|
| (a) For Group I controlled substances: | | |
| CFC–11 | Allied-Signal, Inc | 23,082,358 |
| | E.I. DuPont de Nemours & Co | 33,830,000 |
| | Elf Atochem, N.A | 21,821,500 |
| CFC–12 | Laroche Chemicals | 12,856,364 |
| | Allied-Signal, Inc | 35,699,776 |
| | E.I. DuPont de Nemours & Co | 64,849,000 |
| | Elf Atochem, N.A | 31,089,807 |
| CFC–113 | Laroche Chemicals | 15,330,909 |
| | Allied-Signal, Inc | 21,788,896 |
| CFC–114 | E.I. DuPont de Nemours & Co | 58,553,000 |
| | Allied-Signal, Inc | 1,488,569 |
| CFC–115 | E.I. DuPont de Nemours & Co | 4,194,000 |
| | E.I. DuPont de Nemours & Co | 4,176,000 |
| (b) For Group II controlled substances: | | |
| Halon-1211 | Great Lakes Chemical Corp | 826,487 |
| | ICI Americas, Inc | 2,135,484 |
| Halon-1301 | E.I. DuPont de Nemours & Co | 3,220,000 |
| | Great Lakes Chemical Corp | 1,766,850 |
| Halon-2402 | | |
| (c) For Group III controlled substances: | | |
| CFC–13 | Allied-Signal, Inc | 127,125 |
| | E.I. DuPont de Nemours & Co | 187,831 |
| | Elf Atochem, N.A | 3,992 |
| | Great Lakes Chemical Corp | 56,381 |
| | Laroche Chemicals | 29,025 |
| CFC–111 | | |
| CFC–112 | | |
| CFC–211 | E.I. DuPont de Nemours & Co | 11 |
| CFC–212 | E.I. DuPont de Nemours & Co | 11 |
| CFC–213 | E.I. DuPont de Nemours & Co | 11 |
| CFC–214 | E.I. DuPont de Nemours & Co | 11 |
| CFC–215 | E.I. DuPont de Nemours & Co | 511 |
| | Halocarbon Products Corp | 1,270 |
| CFC–216 | E.I. DuPont de Nemours & Co | 170,574 |
| CFC–217 | E.I. DuPont de Nemours & Co | 511 |
| (d) For Group IV controlled substances: | | |
| $CCl_4$ | Akzo Chemicals, Inc | 7,873,615 |
| | Degussa Corporation | 26,546 |
| | Dow Chemical Company, USA | 18,987,747 |
| | E.I. DuPont de Nemours & Co | 9,099 |
| | Hanlin Chemicals-WV, Inc | 219,616 |
| | ICI Americas, Inc | 853,714 |
| | Occidental Chemical Corp | 1,059,358 |
| | Vulcan Chemicals | 21,931,987 |
| (e) For Group V controlled substances: | | |
| Methyl Chloroform | Dow Chemical Company, USA | 168,030,117 |
| | E.I. DuPont de Nemours & Co | 2 |
| | PPG Industries, Inc | 57,450,719 |
| | Vulcan Chemicals | 89,689,064 |
| (f) For Group VI controlled substances: | | |
| Methyl Bromide | Great Lakes Chemical Corporation | 19,945,788 |
| | Ethyl Corporation | 8,233,894 |
| (g) For Group VII controlled substances: | | |
| HBFC 22B1–1 | Great Lakes Chemical Corporation | 46,211 |

(h) For class II controlled substances: [Reserved]

**§ 82.6 Apportionment of baseline consumption allowances.**

Persons who produced, imported, or produced and imported controlled substances in Group I or Group II in 1986 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (a) and (b) of this section. Persons who produced, imported, or produced and imported controlled substances in Group III, Group IV, or Group V in 1989 are apportioned chemical-specific baseline consumption allowances as set forth in paragraphs (c), (d) and (e) of this section. Persons who produced, imported, or produced and imported controlled substances in Group VI or VII in 1991 are apportioned chemical specific baseline consumption allowances as set forth in paragraphs (f) and (g) of this section.

| *Controlled substance* | *Person* | *Allowances (kg)* |
|---|---|---|
| (a) For Group I controlled substances: | | |
| CFC–11 | Allied-Signal, Inc | 22,683,833 |
| | E.I. DuPont de Nemours & Co | 32,054,283 |
| | Elf Atochem, N.A | 21,740,194 |
| | Hoechst Celanese Corporation | 185,396 |
| | ICI Americas, Inc | 1,673,436 |
| | Kali-Chemie Corporation | 82,500 |
| | Laroche Chemicals | 12,695,726 |
| | National Refrigerants, Inc | 693,707 |
| | Refricentro, Inc | 160,697 |
| | Sumitomo Corporation of America | 5,800 |
| CFC–12 | Allied-Signal, Inc | 35,236,397 |
| | E.I. DuPont de Nemours & Co | 61,098,726 |
| | Elf Atochem, N.A | 32,403,869 |
| | Hoechst Celanese Corporation | 138,865 |
| | ICI Americas, Inc | 1,264,980 |
| | Kali-Chemie Corporation | 355,440 |
| | Laroche Chemicals | 15,281,553 |
| | National Refrigerants, Inc | 2,375,384 |
| | Refricentro, Inc | 242,526 |
| CFC–113 | Allied-Signal, Inc | 18,241,928 |
| | E.I. DuPont de Nemours & Co | 49,602,858 |
| | Elf Atochem, N.A | 244,908 |
| | Holchem | 265,199 |
| | ICI Americas, Inc | 2,399,700 |
| | Refricentro, Inc | 37,385 |
| | Sumitomo Corp. of America | 280,163 |
| CFC–114 | Allied-Signal, Inc | 1,429,582 |
| | E.I. DuPont de Nemours & Co | 3,686,103 |
| | Elf Atochem, N.A | 22,880 |
| | ICI Americas, Inc | 32,930 |
| CFC–115 | E.I. DuPont de Nemours & Co | 2,764,109 |
| | Elf Atochem, N.A | 633,007 |
| | Hoechst Celanese Corporation | 8,893 |
| | ICI Americas, Inc | 2,366,351 |
| | Laroche Chemicals | 135,520 |
| | Refricentro, Inc | 27,337 |
| (b) For Group II controlled substances: | | |
| Halon-1211 | Elf Atochem, N.A | 411,292 |
| | Great Lakes Chemical Corp | 772,775 |
| | ICI Americas, Inc | 2,116,641 |
| | Kali-Chemie Corporation | 330,000 |
| Halon-1301 | E.I. DuPont de Nemours & Co | 2,772,917 |
| | Elf Atochem, N.A | 89,255 |
| | Great Lakes Chemical Corp | 1,744,132 |
| | Kali-Chemie Corporation | 54,380 |
| Halon-2402 | Ausimont | 34,400 |
| | Great Lakes Chemical Corp | 15,900 |
| (c) For Group III controlled substances: | | |
| CFC–13 | Allied-Signal, Inc | 127,124 |
| | E.I. DuPont de Nemours & Co | 158,508 |
| | Elf Atochem, N.A | 3,992 |
| | Great Lakes Chemical Corp | 56,239 |
| | ICI Americas, Inc | 5,855 |
| | Laroche Chemicals | 29,025 |

| *Controlled substance* | *Person* | *Allowances (kg)* |
|---|---|---|
| | National Refrigerants, Inc | 16,665 |
| CFC–111 | | |
| CFC–112 | Sumitomo Corp of America | 5,912 |
| | TG (USA) Corporation | 9,253 |
| CFC–211 | E.I. DuPont de Nemours & Co | 11 |
| CFC–212 | E.I. DuPont de Nemours & Co | 11 |
| CFC–213 | E.I. DuPont de Nemours & Co | 11 |
| CFC–214 | E.I. DuPont de Nemours & Co | 11 |
| CFC–215 | E.I. DuPont de Nemours & Co | 511 |
| | Halocarbon Products Corp | 1,270 |
| CFC–216 | E.I. DuPont de Nemours & Co | 170,574 |
| CFC–217 | E.I. DuPont de Nemours & Co | 511 |
| (d) For Group IV controlled substances: | | |
| $CCl_4$ | Crescent Chemical Co | 56 |
| | Degussa Corporation | 12,466 |
| | Dow Chemical Company, USA | 8,170,561 |
| | E.I. DuPont de Nemours & Co | 26,537 |
| | Elf Atochem, N.A | 41 |
| | Hanlin Chemicals-WV, Inc | 103,133 |
| | Hoechst Celanese Corporation | 3 |
| | ICC Chemical Corp | 1,173,723 |
| | ICI Americas, Inc | 855,466 |
| | Occidental Chemical Corp | 497,478 |
| | Sumitomo Corporation of America | 9 |
| (e) For Group V controlled substances: | | |
| Methyl Chloroform | 3V Chemical Corp | 3,528 |
| | Actex, Inc | 50,171 |
| | Atochem North America | 74,355 |
| | Dow Chemical Company, USA | 125,200,200 |
| | E.I. DuPont de Nemours & Co | 2 |
| | IBM | 2,026 |
| | ICI Americas, Inc | 14,179,850 |
| | Laidlaw | 420,207 |
| | PPG Industries | 45,254,115 |
| | Sumitomo | 1,954 |
| | TG (USA) Corporation | 7,073 |
| | Unitor Ships Service, Inc | 14,746 |
| | Vulcan Chemicals | 70,765,072 |
| (f) For Group VI controlled substances: | | |
| Methyl Bromide | Great Lakes Chemical Corporation | 15,514,746 |
| | Ethyl Corporation | 6,379,906 |
| | AmeriBrom, Inc | 3,524,393 |
| | TriCal, Inc | 109,225 |
| (g) For Group VII controlled substances: | | |
| HBFC 22B1–1 | Great Lakes Chemical Corporation | 40,110 |
| (h) For class II controlled substances: [Reserved] | | |

**§ 82.7 Grant and phased reduction of baseline production and consumption allowances for class I controlled substances.**

For each control period specified in the following table, each person is granted the specified percentage of the baseline production and consumption allowances apportioned to him under §§ 82.5 and 82.6.

[In percent]

| Control period | Class I substances in groups I and III | Class I substances in group II | Class I substances in group IV | Class I substances in group V | Class I substances in group VI | Class I substances in group VII |
|---|---|---|---|---|---|---|
| 1994 | 25 | 0 | 50 | 50 | 100 | 100 |
| 1995 | 25 | 0 | 15 | 30 | 100 | 100 |
| 1996 | 0 | 0 | 0 | 0 | 100 | 0 |
| 1997 | 0 | 0 | 0 | 0 | 100 | 0 |
| 1998 | 0 | 0 | 0 | 0 | 100 | 0 |
| 1999 | 0 | 0 | 0 | 0 | 100 | 0 |

[In percent]—Continued

| Control period | Class I substances in groups I and III | Class I substances in group II | Class I substances in group IV | Class I substances in group V | Class I substances in group VI | Class I substances in group VII |
|---|---|---|---|---|---|---|
| 2000 | 0 | 0 | 0 | 0 | 100 | 0 |
| 2001 | 0 | 0 | 0 | 0 | 0 | 0 |

**§ 82.8 Grant and phased reduction of baseline production and consumption allowances for class II controlled substances. [Reserved]**

**§ 82.9 Availability of production allowances in addition to baseline production allowances.**

(a) Every person apportioned baseline production allowances for class I controlled substances under § 82.5 (a) through (f) is also granted Article 5 allowances equal to:

(1) 15 percent of their baseline production allowances for class I, Group II controlled substances listed under § 82.5 for each control period beginning January 1, 1994 until January 1, 2003;

(2) 10 percent of their baseline production allowance listed for class I, Group I, Group III, Group IV, and Group V controlled substances listed under § 82.5 for each control period ending before January 1, 1996;

(3) 15 percent of their baseline production allowances for class I, Group I, Group III, Group IV, and Group V controlled substances listed under § 82.5 for each control period beginning January 1, 1996 until January 1, 2006.

(b) Effective January 1, 1995, a person allocated Article 5 allowances may produce class I controlled substances for export to Article 5 countries as under § 82.11 and transfer Article 5 allowances as under § 82.12.

(c) Until January 1, 1996, a company may also increase or decrease its production allowances by trading with another Party to the Protocol according to the provision under this paragraph (c) of this section. A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree either to transfer to the person for the current control period some amount of production that the nation is permitted under the Montreal Protocol or to receive from the person for the current control period some amount of production that the person is permitted under this subpart. If the controlled substance is to be returned to the Party from whom allowances are received, the request for production allowances shall also be considered a request for consumption allowances under § 82.10(c). If the controlled substance is to be sold in the United States or to another Party (not the Party from whom the allowances are received), the U.S. company must expend its consumption allowances allocated under §§ 82.6 and 82.7 in order to produce with the additional production allowances.

(1) For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of production being transferred;

(v) The control period(s) to which the transfer applies; and

(vi) For increased production intended for export to the Party from whom the allowances would be received, a signed statement of intent to export to the Party.

(2) For trades to a Party, a person must submit a transfer request that sets forth the following:

(i) The identity and address of the person;

(ii) The identity of the Party;

(iii) The names and telephone numbers of contact persons for the person and for the Party;

(iv) The chemical type and level of allowable production to be transferred; and

(v) The control period(s) to which the transfer applies.

(3) After receiving a transfer request that meets the requirements of paragraph (c)(2) of this section, the Administrator may, at his discretion, consider the following factors in deciding whether to approve such a transfer:

(i) Possible creation of economic hardship;

(ii) Possible effects on trade;

(iii) Potential environmental implications; and

(iv) The total amount of unexpended production allowances held by United States entities.

(4) The Administrator will issue the person a notice either granting or deducting production allowances and specifying the control period to which the transfer applies, provided that the request meets the requirement of paragraph (c)(1) of this section for trades from Parties and paragraphs (c)(2) of this section for trades to Parties, unless the Administrator has decided to disapprove the trade under paragraph (c)(3) of this section for trades to Parties. For a trade from a Party, the Administrator will issue a notice that revises the allowances held by the person to equal the unexpended production allowances held by the person under this subpart plus the level of allowable production transferred from the Party. For a trade to a Party, the Administrator will issue a notice that revises the production limit for the person to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production allowable for that substance under this subpart minus the amount transferred. The change in allowances will be effective on the date that the notice is issued.

(5) If after one person obtains approval for a trade of allowable production of a controlled substance to a Party, one or more other persons obtain approval for trades involving the same controlled substance and the same control period, the Administrator will

issue notices revising the production limits for each of the other persons trading that controlled substance in that control period to equal the lesser of:

(i) The unexpended production allowances held by the person under this subpart minus the amount transferred; or

(ii) The unexpended production allowances held by the person under this subpart minus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production for that substance under this subpart multiplied by the amount transferred divided by the total amount transferred by all the other persons trading the same controlled substance in the same control period minus the amount transferred by that person.

(iii) The Administrator will also issue a notice revising the production limit for each person who previously obtained approval of a trade of that substance in that control period to equal the unexpended production allowances held by the person under this subpart plus the amount by which the United States average annual production of the controlled substance being traded for the three years prior to the transfer is less than the total allowable production under this subpart multiplied by the amount transferred by that person divided by the amount transferred by all of the persons who have traded that controlled substance in that control period. The change in production allowances will be effective on the date that the notice is issued.

(d) Effective January 1, 1996, there will be no trade in production or consumption allowances with other Parties to the Protocol for class I controlled substances, except for class I, Group VI, methyl bromide.

(e) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, a person may obtain production allowances for that controlled substance equal to the amount of that controlled substance produced in the United States that was transformed or destroyed within the United States, or transformed or destroyed by a person of another Party, in the cases where production allowances were expended to produce such substance in the U.S. in accordance with the provisions of this paragraph. A request for production allowances under this section will be considered a request for consumption allowances under § 82.10(b).

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, a person must submit a request for production allowances that includes the following:

(i) The name, address, and telephone number of the person requesting the allowances, and the Employer Identification Number if the controlled substance is being exported;

(ii) The name, quantity, and level of controlled substance transformed or the name, quantity and volume destroyed, and the commodity code if the substance was exported;

(iii) A copy of the invoice or receipt documenting the sale of the controlled substance, including the name, address, contact person and telephone number of the transformer or destroyer;

(iv) A certification that production allowances were expended for the production of the controlled substance, and the date of purchase, if applicable;

(v) If the controlled substance is transformed, the name, quantity, and verification of the commercial use of the resulting chemical and a copy of the IRS certificate of intent to use the controlled substance as a feedstock; and,

(vi) If the controlled substance is destroyed, the verification of the destruction efficiency.

(2) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, the Administrator will review the information and documentation submitted under paragraph (e)(1) of this section and will assess the quantity of class I controlled substance that the documentation and information verifies was transformed or destroyed. The Administrator will issue the person production allowances equivalent to the controlled substances that the Administrator determines were transformed or destroyed. For controlled substances completely destroyed under this rule, the Agency will grant allowances equal to 100 percent of volume intended for destruction. For those controlled substances destroyed at less than a 98 percent destruction efficiency, the Agency will grant allowances commensurate with that percentage of destruction efficiency that is actually achieved. The grant of allowances will be effective on the date that the notice is issued.

(3) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001, for class I, Group VI, if the Administrator determines that the request for production allowances does not satisfactorily substantiate that the person transformed or destroyed controlled substances as claimed, or that modified allowances were not expended, the Administrator will issue a notice disallowing the request for additional production allowances. Within ten working days after receipt of notification, the person may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

(f) Effective January 1, 1996, and until January 1, 2000, a person who was nominated by the United States to the Secretariat of the Montreal Protocol for an essential use exemption may obtain destruction and transformation credits for a class I controlled substance (except class I, Group VI) equal to the amount of that controlled substance produced in the United States that was destroyed or transformed within the United States in cases where the controlled substance was produced for other than destruction or transformation in accordance with the provisions of this subpart, subtracting an offset of 15 percent.

(1) Effective January 1, 1996, and until January 1, 2000, a person must submit a request for destruction and transformation credits that includes the following:

(i) The identity and address of the person and the essential-use exemption and years for which the person was nominated to the Secretariat of the Montreal Protocol;

(ii) The name, quantity and volume of controlled substance destroyed or transformed;

(iii) A copy of the invoice or receipt documenting the sale or transfer of the controlled substance to the person;

(iv) A certification of the previous use of the controlled substance;

(v) For destruction credits, a certification that the controlled substance was destroyed and a certification of the efficiency of the destruction process; and

(vi) For transformation credits, an IRS certificate of feedstock use or transformation of the controlled substance.

(2) Effective January 1, 1996, and until January 1, 2000, the Administrator will issue the person destruction and transformation credits equivalent to the class I controlled substance (except class I, Group VI) recovered from a use system in the United States, that the Administrator determines were destroyed or transformed, subtracting the offset of 15 percent. For controlled substances completely destroyed under

this rule, the Agency will grant destruction credits equal to 100 percent of volume destroyed minus the offset. For those controlled substances destroyed at less than a 98 percent destruction efficiency, the Agency will grant destruction credits commensurate with that percentage of destruction efficiency that is actually achieved minus the offset. The grant of credits will be effective on the date that the notice is issued.

(3) Effective January 1, 1996, and until January 1, 2000, if the Administrator determines that the request for destruction and transformation credits does not satisfactorily substantiate that the person was nominated for an essential-use exemption by the United States to the Secretariat for the Montreal Protocol for the control period, or that the person destroyed or transformed a class I controlled substance as claimed, or that the controlled substance was not recovered from a U.S. use system the Administrator will issue a notice disallowing the request for additional destruction and transformation credits. Within ten working days after receipt of notification, the person may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm the disallowance or grant an allowance, as she/he finds appropriate in light of the available evidence. If no appeal is taken by the tenth day after notification, the disallowance will be final on that day.

**§ 82.10 Availability of consumption allowances in addition to baseline consumption allowances.**

(a) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001 for class I, Group VI, any person may obtain, in accordance with the provisions of this subsection, consumption allowances equivalent to the level of class I controlled substances (other than used controlled substances or transhipments) that the person has exported from the United States and its territories to a Party (as listed in appendix C to this subpart).

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001 for class I, Group VI, to receive consumption allowances in addition to baseline consumption allowances, the exporter of the class I controlled substances must submit to the Administrator a request for consumption allowances setting forth the following:

(i) The identities and addresses of the exporter and the recipient of the exports;

(ii) The exporter's Employer Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and the recipient;

(iv) The quantity and type of controlled substances exported;

(v) The source of the controlled substance and the date purchased;

(vi) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(vii) The country to which the controlled substances were exported;

(viii) A copy of the bill of lading and the invoice indicating the net quantity of controlled substances shipped and documenting the sale of the controlled substances to the purchaser.

(ix) The commodity code of the controlled substance exported; and

(x) Written statement from the producer that the controlled substance was produced with expended allowances.

(2) The Administrator will review the information and documentation submitted under paragraph (a)(1) of this section and will assess the quantity of controlled substances that the documentation verifies was exported. The Administrator will issue the exporter consumption allowances equivalent to the level of controlled substances that the Administrator determined were exported. The grant of the consumption allowances will be effective on the date the notice is issued. If the Administrator determines that the information and documentation does not satisfactorily substantiate that the person exported controlled substances as claimed the Administrator will issue a notice that the consumption allowances are not granted.

(b) Until January 1, 1996, a person may obtain consumption allowances for a class I controlled substance (and until January 1, 2001 for class I, Group VI) equal to the amount of a controlled substance either produced in, or imported into, the United States that was transformed or destroyed in the case where consumption allowances were expended to produce or import such substance in accordance with the provisions of this paragraph. However, a person producing or importing a controlled substance (except class I, Group VI) that was transformed or destroyed must submit to the Administrator the information described under § 82.13 (f)(3)(i) and (ii).

(c) A company may also increase its consumption allowances by receiving production from another Party to the Protocol for class I, Group I through Group V and Group VII controlled substances until January 1, 1996, and for class I, Group VI controlled substances until January 1, 2001. A nation listed in appendix C to this subpart (Parties to the Montreal Protocol) must agree to transfer to the person for the current control period some amount of production that the nation is permitted under the Montreal Protocol. If the controlled substance is to be returned to the Party from whom allowances are received, the request for consumption allowances shall also be considered a request for production allowances under § 82.9(c). For trades from a Party, the person must obtain from the principal diplomatic representative in that nation's embassy in the United States a signed document stating that the appropriate authority within that nation has established or revised production limits for the nation to equal the lesser of the maximum production that the nation is allowed under the Protocol minus the amount transferred, the maximum production that is allowed under the nation's applicable domestic law minus the amount transferred, or the average of the nation's actual national production level for the three years prior to the transfer minus the production allowances transferred. The person must submit to the Administrator a transfer request that includes a true copy of this document and that sets forth the following:

(1) The identity and address of the person;

(2) The identity of the Party;

(3) The names and telephone numbers of contact persons for the person and for the Party;

(4) The chemical type and level of production being transferred;

(5) The control period(s) to which the transfer applies; and

(6) For increased production intended for export to the Party from whom allowances would be received, a signed statement of intent to export to this Party.

(d) On the first day of each control period, until January 1, 1996, the Agency will grant consumption allowances to any person that produced and exported a Group IV controlled substance in the baseline year and that was not granted baseline consumption allowances under § 82.5.

(1) The number of consumption allowances any such person will be granted for each control period will be equal to the number of production allowances granted to that person under § 82.7 for that control period.

(2) Any person granted allowances under this paragraph must hold the same number of unexpended consumption allowances for the control

period for which the allowances were granted by February 15 of the following control period. Every kilogram by which the person's unexpended consumption allowances fall short of the amount the person was granted under this paragraph constitutes a separate violation.

**§ 82.11 Exports to Article 5 Parties.**

(a) If apportioned Article 5 allowances under § 82.9(a), a person may produce class I controlled substances, in accordance with the prohibitions in § 82.4, to be exported (not including exports resulting in transformation or destruction, or used controlled substances) to foreign states listed in appendix E to this subpart (Article 5 countries).

(1) A person must submit a notice to the Administrator of exports to Article 5 countries (except exports resulting in transformation or destruction, or used controlled substances) at the end of the quarter that includes the following:

(i) The identities and addresses of the exporter and the Article 5 country recipient of the exports;

(ii) The exporter's Employee Identification Number;

(iii) The names and telephone numbers of contact persons for the exporter and for the recipient;

(iv) The quantity and the type of controlled substances exported, its source and date purchased;

(v) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(vi) The Article 5 country to which the controlled substances were exported;

(vii) A copy of the bill of lading and invoice indicating the net quantity shipped and documenting the sale of the controlled substances to the Article 5 purchaser;

(viii) The commodity code of the controlled substance exported; and

(ix) A copy of the invoice or sales agreement covering the sale of the controlled substances to the recipient Article 5 country that contains provisions forbidding the reexport of the controlled substance in bulk form and subjecting the recipient or any transferee of the recipient to liquidated damages equal to the resale price of the controlled substances if they are reexported in bulk form.

(2) [Reserved]

(b) [Reserved]

**§ 82.12 Transfers.**

(a) Inter-company transfers.

(1) Until January 1, 1996, for all class I controlled substances, except for Group VI, and until January 1, 2001, for Group VI, any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's consumption allowances or production allowances, and effective January 1, 1995, for all class I controlled substances any person (''transferor'') may transfer to any other person (''transferee'') any amount of the transferor's Article 5 allowances, as follows:

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of allowances being transferred, including the names of the controlled substances for which allowances are to be transferred;

(D) The group of controlled substances to which the allowances being transferred pertains;

(E) The amount of allowances being transferred;

(F) The control period(s) for which the allowances are being transferred;

(G) The amount of unexpended allowances of the type and for the control period being transferred that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA; and

(H) The amount of the one percent offset applied to the unweighted amount traded that will be deducted from the transferor's allowance balance (except for trades from transformers and destroyers to producers or importers for the purpose of allowance reimbursement).

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production, allowable imports and exports of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended allowances sufficient to cover the transfer claim (i.e., the amount to be transferred plus, in the case of transferors of production or consumption allowances, one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) If EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim, the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) If EPA's records show that the transferor has insufficient unexpended allowances to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(1)(ii) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended allowances by the amount to be transferred plus, in the case of transfers of production or consumption allowances, one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(2) Effective January 1, 1996, any person (''transferor'') may transfer to an eligible person (''transferee'') as defined in § 82.9 any amount of the transferor's destruction and transformation credits. The transfer proceeds as follows:

(i) The transferor must submit to the Administrator a transfer claim setting forth the following:

(A) The identities and addresses of the transferor and the transferee;

(B) The name and telephone numbers of contact persons for the transferor and the transferee;

(C) The type of credits being transferred, including the names of the

controlled substances for which credits are to be transferred;

(D) The group of controlled substances to which the credits being transferred pertains;

(E) The amount of destruction and transformation credits being transferred;

(F) The control period(s) for which the destruction and transformation credits are being transferred;

(G) The amount of unexpended destruction and transformation credits for the control period being transferred that the transferor holds under authority of this subpart as of the date the claim is submitted to EPA; and

(H) The amount of the one-percent offset applied to the unweighted amount traded that will be deducted from the transferor's balance.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous transfers and any production of controlled substances reported by the transferor, indicate that the transferor possesses, as of the date the transfer claim is processed, unexpended destruction and transformation credits sufficient to cover the transfer claim (i.e., the amount to be transferred plus one percent of that amount). Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) If EPA's records show that the transferor has sufficient unexpended destruction and transformation credits to cover the transfer claim, the Administrator will issue a notice indicating that EPA does not object to the transfer and will reduce the transferor's balance of unexpended or credits by the amount to be transferred plus one percent of that amount. When EPA issues a no objection notice, the transferor and the transferee may proceed with the transfer. However, if EPA ultimately finds that the transferor did not have sufficient unexpended credits to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(B) If EPA's records show that the transferor has insufficient unexpended destruction and transformation credits to cover the transfer claim, or that the transferor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the transfer. Within 10 working days after receipt of notification, either party may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) In the event that the Administrator does not respond to a transfer claim within the three working days specified in paragraph (a)(2)(ii) of this section, the transferor and transferee may proceed with the transfer. EPA will reduce the transferor's balance of unexpended destruction and transformation credits by the amount to be transferred plus one percent of that amount. However, if EPA ultimately finds that the transferor did not have sufficient unexpended credits to cover the claim, the transferor and transferee will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

(b) Inter-pollutant conversions.

(1) Until January 1, 1996, for all class I controlled substances, except Group VI, and until January 1, 2001 for Group VI, any person (''convertor'') may convert consumption allowances or production allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the same Group as the first as listed in appendix A of this subpart, following the procedures described in paragraph (b)(4) of this section.

(2) Effective January 1, 1995, any person (''convertor'') may convert Article 5 allowances for one class I controlled substance to the same type of allowance for another class I controlled substance within the same Group of controlled substances as the first as listed in appendix A of this subpart, following the procedures described in paragraph (b)(4) of this section.

(3) Effective January 1, 1996, any person (''convertor'') may convert destruction and/or transformation credits for one class I controlled substance to the same type of credits for another class I controlled substance within the same Group of controlled substances as the first as listed in appendix A of this subpart, following the procedures in paragraph (b)(4) of this section.

(4) The convertor must submit to the Administrator a conversion claim.

(i) The conversion claim would include the following:

(A) The identity and address of the convertor;

(B) The name and telephone number of a contact person for the convertor;

(C) The type of allowances or credits being converted, including the names of the controlled substances for which allowances or credits are to be converted;

(D) The group of controlled substances to which the allowances or credits being converted pertains;

(E) The amount and type of allowances or credits to be converted;

(F) The amount of allowances or credits to be subtracted from the convertor's unexpended allowances or credits for the first controlled substance, to be equal to 101 percent of the amount of allowances or credits converted;

(G) The amount of allowances or credits to be added to the convertor's unexpended allowances or credits for the second controlled substance, to be equal to the amount of allowances or credits for the first controlled substance being converted multiplied by the quotient of the ozone depletion factor of the first controlled substance divided by the ozone depletion factor of the second controlled substance, as listed in Appendix A to this subpart;

(H) The control period(s) for which the allowances or credits are being converted; and

(I) The amount of unexpended allowances or credits of the type and for the control period being converted that the convertor holds under authority of this subpart as of the date the claim is submitted to EPA.

(ii) The Administrator will determine whether the records maintained by EPA, taking into account any previous conversions, any transfers, any credits, and any production, imports (not including transhipments or used controlled substances), or exports (not including transhipments or used controlled substances) of controlled substances reported by the convertor, indicate that the convertor possesses, as of the date the conversion claim is processed, unexpended allowances or credits sufficient to cover the conversion claim (i.e., the amount to be converted plus one percent of that amount). Within three working days of receiving a complete conversion claim, the Administrator will take action to notify the convertor as follows:

(A) If EPA's records show that the convertor has sufficient unexpended allowances or credits to cover the conversion claim, the Administrator will issue a notice indicating that EPA does not object to the conversion and will reduce the convertor's balance of unexpended allowances or credits by the amount to be converted plus one percent of that amount. When EPA issues a no objection notice, the convertor may proceed with the conversion. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or

credits to cover the claim, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(B) If EPA's records show that the convertor has insufficient unexpended allowances or credits to cover the conversion claim, or that the convertor has failed to respond to one or more Agency requests to supply information needed to make a determination, the Administrator will issue a notice disallowing the conversion. Within 10 working days after receipt of notification, the convertor may file a notice of appeal, with supporting reasons, with the Administrator. The Administrator may affirm or vacate the disallowance. If no appeal is taken by the tenth working day after notification, the disallowance shall be final on that day.

(iii) In the event that the Administrator does not respond to a conversion claim within the three working days specified in paragraph (b)(4)(ii) of this section, the convertor may proceed with the conversion. EPA will reduce the convertor's balance of unexpended allowances or credits by the amount to be converted plus one percent of that amount. However, if EPA ultimately finds that the convertor did not have sufficient unexpended allowances or credits to cover the claims, the convertor will be held liable for any violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper conversion.

(5) Effective January 1, 1995, and for every control period thereafter, inter-pollutant trades will be permitted during the 45 days after the end of a control period.

(c) Inter-company transfers and Inter-pollutant conversions.

(1) Until January 1, 1996, for production and consumption allowances; effective January 1, 1995, for Article 5 allowances; and effective January 1, 1996, for destruction and/or transformation credits; if a person requests an inter-company transfer and an inter-pollutant conversion simultaneously, the amount subtracted from the convertor-transferor's unexpended allowances or unexpended credits for the first controlled substance will be equal to 101 percent of the amount of allowances or credits that are being converted and transferred.

(2) [Reserved]

**§ 82.13 Recordkeeping and reporting requirements.**

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995.

(b) Reports and records required by this section may be used for purposes of compliance determinations. These requirements are not intended as a limitation on the use of other evidence admissible under the Federal Rules of Evidence. Failure to provide the reports and records required by this section, and to certify the accuracy of the information in the reports and records required by this section, will be considered a violation of this subpart.

(c) Unless otherwise specified, reports required by this section must be mailed to the Administrator within 45 days of the end of the applicable reporting period.

(d) Records and copies of reports required by this section must be retained for three years.

(e) In reports required by this section, quantities of controlled substances must be stated in terms of kilograms.

(f) Every person (''producer'') who produces class I controlled substances during a control period must comply with the following recordkeeping and reporting requirements:

(1) Within 120 days of May 10, 1995, or within 120 days of the date that a producer first produces a class I controlled substance, whichever is later, every producer who has not already done so must submit to the Administrator a report describing:

(i) The method by which the producer in practice measures daily quantities of controlled substances produced;

(ii) Conversion factors by which the daily records as currently maintained can be converted into kilograms of controlled substances produced, including any constants or assumptions used in making those calculations (e.g., tank specifications, ambient temperature or pressure, density of the controlled substance);

(iii) Internal accounting procedures for determining plant-wide production;

(iv) The quantity of any fugitive losses accounted for accounted for in the production figures; and

(v) The estimated percent efficiency of the production process for the controlled substance. Within 60 days of any change in the measurement procedures or the information specified in the above report, the producer must submit a report specifying the revised data or procedures to the Administrator.

(2) Every producer of a class I controlled substance during a control period must maintain the following records:

(i) Dated records of the quantity of each controlled substance produced at each facility;

(ii) Dated records of the quantity of controlled substances produced for use in processes that result in their transformation or for use in processes that result in their destruction and quantity sold for use in processes that result in their transformation or for use in processes that result in their destruction;

(iii) Dated records of the quantity of controlled substances produced for an essential-use and quantity sold for use in an essential-use process;

(iv) Dated records of the quantity of controlled substances produced with expended destruction and/or transformation credits;

(v) Dated records of the quantity of controlled substances produced with Article 5 allowances;

(vi) Copies of invoices or receipts documenting sale of controlled substance for use in processes resulting in their transformation or for use in processes resulting in destruction;

(vii) Dated records of the quantity of each controlled substance used at each facility as feedstocks or destroyed in the manufacture of a controlled substance or in the manufacture of any other substance, and any controlled substance introduced into the production process of the same controlled substance at each facility;

(viii) Dated records identifying the quantity of each chemical not a controlled substance produced within each facility also producing one or more controlled substances;

(ix) Dated records of the quantity of raw materials and feedstock chemicals used at each facility for the production of controlled substances;

(x) Dated records of the shipments of each controlled substance produced at each plant;

(xi) The quantity of controlled substances, the date received, and names and addresses of the source of used materials containing controlled substances which are recycled or reclaimed at each plant;

(xii) Records of the date, the controlled substance, and the estimated quantity of any spill or release of a controlled substance that equals or exceeds 100 pounds;

(xiii) Internal Revenue Service Certificates in the case of transformation, or the destruction verification in the case of destruction (as in § 82.13(k)), showing that the purchaser or recipient of a controlled substance, in the United States or in another country that is a Party, certifies the intent to either transform or destroy the controlled substance, or sell the controlled substance for transformation or destruction in cases when production

and consumption allowances were not expended;

(xiv) Written verifications that essential-use allowances were conveyed to the producer for the production of specified quantities of a specific controlled substance that will only be used for the named essential-use;

(xv) Written certifications that quantities of controlled substances, meeting the purity criteria in Appendix G of this subpart, were purchased by distributors of laboratory supplies or by laboratory customers to be used only for an essential-use laboratory application, and not to be resold or used in manufacturing.

(xvi) Written verifications from a U.S. purchaser that the controlled substance was exported to an Article 5 country in cases when Article 5 allowances were expended during production.

(3) For each quarter, each producer of a class I controlled substance must provide the Administrator with a report containing the following information:

(i) The production by company in that quarter of each controlled substance, specifying the quantity of any controlled substance used in processing, resulting in its transformation by the producer;

(ii) The amount of production for use in processes resulting in destruction of controlled substances by the producer;

(iii) The levels of production (expended allowances and credits) for each controlled substance;

(iv) The producer's total of expended and unexpended production allowances, consumption allowances, Article 5 allowances, and amount of essential-use allowances and destruction and transformation credits conferred at the end of that quarter;

(v) The quantity of used material received containing controlled substances that are recycled or reclaimed;

(vi) The amount of controlled substance sold or transferred during the quarter to a person other than the producer for use in processes resulting in its transformation or eventual destruction;

(vii) A list of the quantities and names of controlled substances exported, by the producer and or by other U.S. companies, to a Party to the Protocol that will be transformed or destroyed and therefore were not produced expending production or consumption allowances;

(viii) For transformation in the United States or by a person of another Party, one copy of an IRS certification of intent to transform the same controlled substance for a particular transformer and a list of additional quantities shipped to that same transformer for the quarter;

(ix) For destruction in the United States or by a person of another Party, one copy of a destruction verification (as under § 82.13(k)) for a particular destroyer, destroying the same controlled substance, and a list of additional quantities shipped to that same destroyer for the quarter;

(x) A list of U.S. purchasers of controlled substances that exported to an Article 5 country in cases when Article 5 allowances were expended during production;

(xi) A list of the essential-use allowance holders, distributors of laboratory supplies and laboratory customers from whom orders were placed and the quantity of specific essential-use controlled substances requested and produced;

(xii) The certifications from essential-use allowance holders and laboratory customers stating that the controlled substances were purchased solely for specified essential uses and will not be resold or used in manufacturing; and

(xiii) In the case of laboratory essential uses, a certification from distributors of laboratory supplies that controlled substances were purchased for sale to laboratory customers who certify that the substances will only be used for laboratory applications and will not be resold or used in manufacturing.

(4) For any person who fails to maintain the records required by this paragraph, or to submit the report required by this paragraph, the Administrator may assume that the person has produced at full capacity during the period for which records were not kept, for purposes of determining whether the person has violated the prohibitions at § 82.4.

(g) Importers of class I controlled substances during a control period must comply with record-keeping and reporting requirements specified in this paragraph (g).

(1) Recordkeeping—Importers. Any importer of a class I controlled substance (including used, recycled and reclaimed controlled substances) must maintain the following records:

(i) The quantity of each controlled substance imported, either alone or in mixtures, including the percentage of each mixture which consists of a controlled substance;

(ii) The quantity of those controlled substances imported that are used (including recycled or reclaimed) and the information provided with the petition as under § 82.13(g)(2);

(iii) The quantity of controlled substances other than transhipments or used, recycled or reclaimed substances imported for use in processes resulting in their transformation or destruction and quantity sold for use in processes that result in their destruction or transformation;

(iv) The date on which the controlled substances were imported;

(v) The port of entry through which the controlled substances passed;

(vi) The country from which the imported controlled substances were imported;

(vii) The commodity code for the controlled substances shipped;

(viii) The importer number for the shipment;

(ix) A copy of the bill of lading for the import;

(x) The invoice for the import;

(xi) The quantity of imports of used, recycled or reclaimed class I controlled substances and class II controlled substances;

(xii) The U.S. Customs entry form;

(xiii) Dated records documenting the sale or transfer of controlled substances for use in processes resulting in transformation or destruction;

(xiv) Copies of IRS certifications that the controlled substance will be transformed or destruction verifications that it will be destroyed (as in § 82.13(k));

(xv) Dated records of the quantity of controlled substances imported for an essential-use or imported with destruction and transformation credits; and

(xvi) Copies of documents conveying the right to import controlled substances for specific essential uses, or certifications that imported controlled substances are being purchased for essential laboratory and analytical applications or being purchased for eventual sale to laboratories that certify the controlled substances are for essential laboratory applications.

(2) Petitioning—Importers of Used, Recycled or Reclaimed Controlled Substances and Transhipments.

For each individual shipment (not to be aggregated) over 150 pounds of a used, recycled or reclaimed controlled substance as defined in § 82.3, an importer must submit to the Administrator, at least 15 working days before the shipment is to leave the foreign port of export, the following information in a petition:

(i) The name and quantity of the used, recycled or reclaimed controlled substance to be imported (including material that has been recycled or reclaimed);

(ii) The name and address of the importer, the importer ID number, the contact person, and the phone and fax numbers;

(iii) Name and address of the source(s) of the used, recycled or reclaimed controlled substance, including a description of the previous use(s), when possible;

(iv) Name and address of the exporter and/or foreign owner of the material,

(v) The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical;

(vi) The intended use of the used, recycled or reclaimed controlled substance;

(vii) The name, address and contact person of the U.S. reclamation facility, where applicable;

(viii) A certification that the purchaser of the used, recycled or reclaimed controlled substance being imported is liable for payment of the tax;

(ix) If the imported controlled substance was reclaimed in a foreign Party, the name and address of the foreign reclamation facility, the contact person at the facility, and the phone and fax number;

(x) If the imported used controlled substance is intended to be sold as a refrigerant in the U.S., the name and address of the U.S. reclaimer who will bring the material to the standard required under section 608 (§ 82.152(g)) of the CAA, if not already reclaimed to those specifications.

(3) The Administrator will review the information submitted under paragraph (g)(2) of this section and assess the completeness and accuracy of the petition for the import of the used, recycled or reclaimed controlled substance. If the Administrator determines that the information is insufficient, or there is reason to disallow the import, the Administrator will issue an objection notice before the shipment is to leave the foreign port of export (the end of the 15 working days). In the event that the Administrator does not respond to the petition within the 15 working days, the importer may proceed with the import. The importer may re-petition the Agency, if the Administrator indicated insufficient information to make a determination.

(3) Reporting Requirements—Importers. For each quarter, every importer of a class I controlled substance (including importers of used, recycled or reclaimed controlled substances) must submit to the Administrator a report containing the following information:

(i) Summaries of the records required in paragraphs (g)(1) (i) through (xvi) of this section for the previous quarter;

(ii) The total quantity imported in kilograms of each controlled substance for that quarter;

(iii) The quantity of those controlled substances imported that are used, recycled or reclaimed;

(iv) The levels of import (expended consumption allowances before January 1, 1996) of controlled substances for that quarter and totaled by chemical for the control-period-to-date;

(vii) The importer's total sum of expended and unexpended consumption allowances by chemical as of the end of that quarter;

(viii) The amount of controlled substances imported for use in processes resulting in their transformation or destruction;

(ix) The amount of controlled substances sold or transferred during the quarter to each person for use in processes resulting in their transformation or eventual destruction;

(x) The amount of controlled substances sold or transferred during the quarter to each person for an essential use;

(xi) The amount of controlled substances imported with destruction and transformation credits;

(xii) Internal Revenue Service Certificates showing that the purchaser or recipient of imported controlled substances intends to transform those substances or destruction verifications (as in § 82.13(k)) showing that purchaser or recipient intends to destroy the controlled substances; and

(xiii) A list of the essential-use allowance holder and/or laboratory from whom orders were placed and the quantity of specific essential-use controlled substances requested and imported.

(h) Reporting Requirements—Exporters. For any exports of class I controlled substances not reported under § 82.10 (additional consumption allowances), or under § 82.13(f)(3) (reporting for producers of controlled substances), the exporter who exported a class I controlled substances must submit to the Administrator the following information within 45 days after the end of the control period in which the unreported exports left the United States:

(1) The names and addresses of the exporter and the recipient of the exports;

(2) The exporter's Employee Identification Number;

(3) The type and quantity of each controlled substance exported and what percentage, if any, of the controlled substance is used, recycled or reclaimed;

(4) The date on which, and the port from which, the controlled substances were exported from the United States or its territories;

(5) The country to which the controlled substances were exported;

(6) The amount exported to each Article 5 country;

(7) The commodity code of the controlled substance shipped; and

(8) The sales contract certifying that the controlled substance that was exported to a Party to the Protocol will be transformed or destroyed.

(i) Every person who has requested additional production allowances under § 82.9(e) or destruction and transformation credits under § 82.9(f) or consumption allowances under § 82.10(b) or who transforms or destroys class I controlled substances not produced by that person must maintain the following:

(1) Dated records of the quantity and level of each controlled substance transformed or destroyed;

(2) Copies of the invoices or receipts documenting the sale or transfer of the controlled substance to the person;

(3) In the case where those controlled substances are transformed, dated records of the names, commercial use, and quantities of the resulting chemical(s);

(4) In the case where those controlled substances are transformed, dated records of shipments to purchasers of the resulting chemical(s);

(5) Dated records of all shipments of controlled substances received by the person, and the identity of the producer or importer of the controlled substances;

(6) Dated records of inventories of controlled substances at each plant on the first day of each quarter; and

(7) A copy of the person's IRS certification of intent to transform or the purchaser's or recipient's destruction verification of intent to destroy (as under § 82.13(k)), in the case where substances were purchased or transferred for transformation or destruction purposes.

(j) Persons who destroy class I controlled substances shall, following promulgation of this rule, provide EPA with a one-time report stating the destruction unit's destruction efficiency and the methods used to record the volume destroyed and those used to determine destruction efficiency and the name of other relevant federal or state regulations that may apply to the destruction process. Any changes to the unit's destruction efficiency or methods used to record volume destroyed and to determine destruction efficiency must be reflected in a revision to this report

to be submitted to EPA within 60 days of the change.

(k) Persons who purchase or receive and subsequently destroy controlled class I substances that were originally produced without expending allowances shall provide the producer or importer from whom they purchased or received the controlled substances with a verification that controlled substances will be used in processes that result in their destruction.

(1) The destruction verification shall include the following:

(i) Identity and address of the person intending to destroy controlled substances;

(ii) Indication of whether those controlled substances will be completely destroyed, as defined in § 82.3 of this rule, or less than completely destroyed, in which case the destruction efficiency at which such substances will be destroyed must be included;

(iii) Period of time over which the person intends to destroy controlled substances; and

(iv) Signature of the verifying person.

(2) If, at any time, any aspects of this verification change, the person must submit a revised verification reflecting such changes to the producer from whom that person purchases controlled substances intended for destruction.

(l) Persons who purchase class I controlled substances and who subsequently transform such controlled substances shall provide the producer or importer with the IRS certification that the controlled substances are to be used in processes resulting in their transformation.

(m) Any person who transforms or destroys class I controlled substances who has submitted an IRS certificate of intent to transform or a destruction verification (as under § 82.13(k)) to the producer of the controlled substance, must report the names and quantities of class I controlled substances transformed and destroyed for each control period within 45 days of the end of such control period.

(n) Every person who produces, imports, or exports class II chemicals must report its quarterly level of production, imports, and exports of these chemicals within 45 days of the end of each quarter (including those substances transformed or destroyed).

(o) Every person who imports or exports used class II controlled substances must report its annual level within 45 days of the end of the control period.

(p) Persons who import or export used controlled substances (including recycled or reclaimed) must label their bill of lading or invoice indicating that the controlled substance is used, recycled or reclaimed.

(q) Persons who import heels of controlled substances must label their bill of lading or invoice indicating that the controlled substance in the container is a heel.

(r) Every person who brings back a container with a heel to the United States, as defined in § 82.3, must report quarterly the amount brought into the United States certifying that the residual amount in each shipment is less than 10 percent of the volume of the container and will either:

(1) Remain in the container and be included in a future shipment;

(2) Be recovered and transformed;

(3) Be recovered and destroyed; or

(4) Be recovered for a non-emissive use.

(s) Every person who brings a container with a heel into the United States must report on the final disposition of each shipment within 45 days of the end of the control period.

(t) Every person who transships a controlled substance must maintain records that indicate that the controlled substance shipment originated in a foreign country destined for another foreign country, and does not enter interstate commerce with the United States.

(u) Any person allocated essential-use allowances who submits an order to a producer or importer for a controlled substance must report the quarterly quantity received from each producer or importer. Any distributor of laboratory supplies receiving controlled substances under the global laboratory essential-use exemption for sale to laboratory customers must report quarterly the quantity received of each controlled substance from each producer or importer.

(v) Any distributor of laboratory supplies who purchased controlled substances under the global laboratory essential-use exemption must submit quarterly copies of certifications received in that quarter from laboratory customers, as under § 82.13(w), and the quantity of each controlled substance purchased by each laboratory customer whose certification was previously filed.

(w) A laboratory customer purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for laboratory applications and not be resold or used in manufacturing. The certification must also include:

(1) The identity and address of the laboratory customer;

(2) The name and phone number of a contact person for the laboratory customer;

(3) The name and quantity of each controlled substance purchased, and the estimated percent of the controlled substance that will be used for each listed type of laboratory application.

## Appendix A to Subpart A—Class I Controlled Substances

| Class 1 controlled substances | ODP |
|---|---|
| A. Group I: | |
| $CFCl_3$-Trichlorofluoromethane (CFC–ll) | 1.0 |
| $CF_2Cl_2$-Dichlorofifluoromethane (CFC–12) | 1.0 |
| $C_2F_3Cl_3$-Trichlorotrifluoroethane (CFC–113) | 0.8 |
| $C_2F_4Cl_2$-Dichlorotetrafluoroethane (CFC–114) | 1.0 |
| $C_2F_5Cl$-Monochloropentafluoroethane (CFC–115) | 0.6 |
| All isomers of the above chemicals | |
| B. Group II: | |
| $CF_2ClBr$-Bromochlorodifluoromethane (Halon-1211) | 3.0 |
| $CF_3Br$-Bromotrifluoromethane (Halon-1301) | 10.0 |
| $C_2F_4Br_2$-Dibromotetrafluoroethane (Halon-2402) | 6.0 |
| All isomers of the above chemicals | |
| C. Group III: | |
| $CF_3Cl$-Chlorotrifluoromethane (CFC–13) | 1.0 |
| $C_2FCl_5$-(CFC–111) | 1.0 |
| $C_2F_2Cl_4$-(CFC–112) | 1.0 |
| $C_3FCl_7$-(CFC–211) | 1.0 |
| $C_3F_2Cl_6$-(CFC–212) | 1.0 |
| $C_3F_3Cl_5$-(CFC–213) | 1.0 |
| $C_3F_4Cl_4$-(CFC–214) | 1.0 |
| $C_3F_5Cl_3$-(CFC–215) | 1.0 |
| $C_3F_6Cl_2$-(CFC–216) | 1.0 |
| $C_3F_7Cl$-(CFC–217) | 1.0 |
| All isomers of the above chemicals | |
| D. Group IV: $CCl_4$-Carbon Tetrachloride | 1.1 |
| E. Group V: | |
| $C_2H_3Cl_3$-1,1,1 Trichloroethane (Methyl chloroform) | 0.1 |
| All isomers of the above chemical except 1,1,2-trichloroethane | |
| F. Group VI: $CH_3Br$—Bromomethane (Methyl Bromide) | 0.7 |
| G. Group VII: | |
| $CHFBR_2$ | 1.00 |
| $CHF_2Br$ (HBFC–2201) | 0.74 |
| $CH_2FBr$ | 0.73 |
| $C_2HFBr_4$ | 0.3–0.8 |
| $C_2HF_2Br_3$ | 0.5–1.8 |
| $C_2HF_3Br_2$ | 0.4–1.6 |
| $C_2HF_4Br$ | 0.7–1.2 |

| Class 1 controlled substances | ODP |
|---|---|
| $C_2H_2FBr_3$ | 0.1–1.1 |
| $C_2H_2F_2Br_2$ | 0.2–1.5 |
| $C_2H_2F_3Br$ | 0.7–1.6 |
| $C_2H_2FBr_2$ | 0.1–1.7 |
| $C_2H_3F_2Br$ | 0.2–1.1 |
| $C_2H_4FBr$ | 0.07–0.1 |
| $C_3HFBr_6$ | 0.3–1.5 |
| $C_3HF_2Br_5$ | 0.2–1.9 |
| $C_3HF_3Br_4$ | 0.3–1.8 |
| $C_3HF_4Br_3$ | 0.5–2.2 |
| $C_3HF_5Br_2$ | 0.9–2.0 |
| $C_3HF_6Br$ | 0.7–3.3 |
| $C_3H_2FBR_5$ | 0.1–1.9 |
| $C_3H_2F_2BR_4$ | 0.2–2.1 |
| $C_3H_2F_3Br_3$ | 0.2–5.6 |
| $C_3H_2F_4Br_2$ | 0.3–7.5 |
| $C_3H_2F_5BR$ | 0.9–14 |
| $C_3H_3FBR_4$ | 0.08–1.9 |
| $C_3H_3F_2Br_3$ | 0.1–3.1 |
| $C_3H_3F_3Br_2$ | 0.1–2.5 |
| $C_3H_3F_4Br$ | 0.3–4.4 |
| $C_3H_4FBr_3$ | 0.03–0.3 |
| $C_3H_4F_2Br_2$ | 0.1–1.0 |
| $C_3H_4F_3Br$ | 0.07–0.8 |
| $C_3H_5FBr_2$ | 0.04–0.4 |
| $C_3H_5F_2Br$ | 0.07–0.8 |
| $C_3H_6FB$ | 0.02–0.7 |

## Appendix B to Subpart A—Class II Controlled Substances

| Controlled substance | ODP |
|---|---|
| $CHFCl_2$-Dichlorofluoromethane (HCFC–21). | [Reserved]. |
| $CHF_2Cl$-Chlorodifluoromethane (HCFC–22). | 0.05 |
| $CH_2FCl$-Chlorofluoromethane (HCFC–31). | [Reserved]. |
| $C_2HFCl_4$-(HCFC–121) | [Reserved]. |
| $C_2HF_2Cl_3$-(HCFC–122) | [Reserved]. |
| $C_2HF_3Cl_2$-(HCFC–123) | 0.02 |
| $C_2HF_4Cl$-(HCFC–124) | 0.02 |
| $C_2H_2FCl_3$-(HCFC–131) | [Reserved]. |
| $C_2H_2F_2Cl_2$-(HCFC–132b) | [Reserved]. |
| $C_2H_2F_3Cl$-(HCFC–133a) | [Reserved]. |
| $C_2H_3FCl_2$-(HCFC–141b) | 0.12 |
| $C_2H_3F_2Cl$-(HCFC–142b) | 0.06 |
| $C_3HCFCl_6$-(HCFC–221) | [Reserved]. |
| $C_3HF2Cl_5$-(HCFC–222) | [Reserved]. |
| $C_3HF_3Cl_4$-(HCFC–223) | [Reserved]. |
| $C_3HF_4Cl_3$-(HCFC–224) | [Reserved]. |
| $C_3HF_5Cl_2$-(HCFC–225ca) | [Reserved]. |
| $C_3HF_5Cl$-(HCFC–225cb) | [Reserved]. |
| $C_3HF_6Cl$-(HCFC–226) | [Reserved]. |
| $C_3H_2FCl_5$-(HCFC–231) | [Reserved]. |
| $C_3H_2F_2Cl_4$-(HCFC–232) | [Reserved]. |
| $C_3H_2F_3Cl_3$-(HCFC–233) | [Reserved]. |
| $C_3H_2F_4Cl_2$-(HCFC–234) | [Reserved]. |
| $C_3H_2F_5Cl$-(HCFC–235) | [Reserved]. |
| $C_3H_3FCl_4$-(HCFC–241) | [Reserved]. |
| $C_3H_3F_2Cl_3$-(HCFC–242) | [Reserved]. |
| $C_3H_3F_3Cl_2$-(HCFC–243) | [Reserved]. |
| $C_3H_3F_4Cl$-(HCFC–244) | [Reserved]. |
| $C_3H_4FCl_3$-(HCFC–251) | [Reserved]. |
| $C_3H_4F_2Cl_2$-(HCFC–252) | [Reserved]. |
| $C_3H_4F_3Cl$-(HCFC–253) | [Reserved]. |
| $C_3H_5FCl_2$-(HCFC–261) | [Reserved]. |
| $C_3H_5F_2Cl$-(HCFC–262) | [Reserved]. |
| $C_3H_6FCl$-(HCFC–271) | [Reserved]. |
| All isomers of the above chemicals | |

## Appendix C to Subpart A—Parties to the Montreal Protocol: Annex 1—All Parties

| Foreign state | Montreal protocol | London amendments | Copenhagen amendments |
|---|---|---|---|
| Algeria | √ | √ | |
| Antigua and Barbuda | √ | √ | √ |
| Argentina | √ | √ | |
| Australia | √ | √ | √ |
| Austria | √ | √ | |
| Bahamas | √ | √ | √ |
| Bahrain | √ | √ | |
| Bangladesh | √ | √ | |
| Barbados | √ | √ | √ |
| Belarus | √ | | |
| Belgium | √ | √ | |
| Benin | √ | | |
| Bolivia | √ | √ | √ |
| Bosnia and Hertsegovina | √ | | |
| Botswana | √ | | |
| Brazil | √ | √ | |
| Brunei Darussalam | √ | | |
| Bulgaria | √ | | |
| Burkina Faso | √ | √ | |
| Cameroon | √ | √ | |
| Canada | √ | √ | √ |
| Central African Republic | √ | | |
| Chad | √ | | √ |
| Chile | √ | √ | √ |
| China | √ | √ | |
| Colombia | √ | √ | |
| Comoros | √ | √ | |
| Congo | √ | √ | |
| Costa Rica | √ | | |
| Cote Ivoire | √ | √ | |
| Croatia | √ | √ | |
| Cuba | √ | | √ |
| Cyprus | √ | √ | |
| Czech Republic | √ | | |
| Denmark | √ | √ | √ |
| Dominica | √ | √ | |
| Dominican Republic | √ | | |
| Ecuador | √ | √ | √ |
| Egypt | √ | √ | √ |
| El Salvador | √ | | |
| Ethiopia | √ | | |
| European Community | √ | √ | |
| Fiji | √ | √ | |
| Finland | √ | √ | √ |
| France | √ | √ | |
| Gabon | √ | | |
| Gambia | √ | | |
| Germany | √ | √ | √ |
| Ghana | √ | √ | |
| Greece | √ | √ | √ |
| Grenada | √ | √ | |
| Guatemala | √ | | |
| Guinea | √ | √ | |
| Guyana | √ | √ | |
| Honduras | √ | | |
| Hungary | √ | √ | √ |
| Iceland | √ | √ | √ |
| India | √ | √ | |
| Indonesia | √ | √ | |
| Iran | √ | | |
| Ireland | √ | √ | |
| Israel | √ | √ | |

## Appendix C to Subpart A—Parties to the Montreal Protocol: Annex 1—All Parties—Continued

| Foreign state | Montreal protocol | London amendments | Copenhagen amendments |
|---|---|---|---|
| Italy | √ | √ | √ |
| Jamaica | √ | √ | |
| Japan | √ | √ | √ |
| Jordan | √ | √ | |
| Kenya | √ | √ | √ |
| Kiribati | √ | | |
| Korea, Democratic People's Republic of | √ | | |
| Korea, Republic of | √ | √ | √ |
| Kuwait | √ | √ | √ |
| Lebanon | √ | √ | |
| Lesotho | √ | | |
| Libya | √ | | |
| Liechtenstein | √ | √ | |
| Lithuania | √ | | |
| Luxembourg | √ | √ | √ |
| Macedonia | √ | | |
| Malawi | √ | √ | √ |
| Malaysia | √ | √ | √ |
| Maldives | √ | √ | |
| Mali | √ | √ | |
| Malta | √ | √ | |
| Marshall Islands | √ | √ | √ |
| Mauritania | √ | | |
| Mauritius | √ | √ | √ |
| Mexico | √ | √ | √ |
| Monaco | √ | √ | |
| Morocco | √ | | |
| Mozambique | √ | √ | √ |
| Myranmar | √ | √ | |
| Namibia | √ | | |
| Nepal | √ | √ | |
| Netherlands | √ | √ | √ |
| New Zealand | √ | √ | √ |
| Nicaragua | √ | | |
| Niger | √ | | |
| Nigeria | √ | | |
| Norway | √ | √ | √ |
| Pakistan | √ | √ | √ |
| Panama | √ | √ | |
| Papua New Guinea | √ | √ | |
| Paraguay | √ | √ | |
| Peru | √ | √ | |
| Philippines | √ | √ | |
| Poland | √ | | |
| Portugal | √ | √ | |
| Romania | √ | √ | |
| Russian Federation | √ | √ | |
| Saint Kitts and Nevis | √ | | √ |
| Saint Lucia | √ | | |
| Samoa | √ | | |
| Saudi Arabia | √ | √ | √ |
| Senegal | √ | √ | |
| Seychelles | √ | √ | √ |
| Singapore | √ | √ | |
| Slovakia | √ | √ | |
| Slovenia | √ | √ | |
| Solomon Islands | √ | √ | |
| South Africa | √ | √ | |
| Spain | √ | √ | |
| Sri Lanka | √ | √ | |
| Sudan | √ | | |
| Swaziland | √ | | |
| Sweden | √ | √ | √ |
| Switzerland | √ | √ | |

APPENDIX C TO SUBPART A—PARTIES TO THE MONTREAL PROTOCOL: ANNEX 1—ALL PARTIES—Continued

| Foreign state | Montreal protocol | London amendments | Copenhagen amendments |
|---|---|---|---|
| Syrian Arab Republic | √ | | |
| Tanzania, United Republic of | √ | √ | |
| Thailand | √ | √ | |
| Togo | √ | | |
| Trinidad and Tobago | √ | | |
| Tunisia | √ | √ | √ |
| Turkey | √ | | |
| Turkministan | √ | √ | |
| Tuvalu | √ | | |
| Uganda | √ | √ | |
| Ukranian SSR | √ | | |
| United Arab Emirates | √ | | |
| United Kingdom | √ | √ | √ |
| Uruguay | √ | √ | |
| United States | √ | √ | √ |
| Uruguay | √ | √ | |
| Uzbekistan | √ | | |
| Vanuatu | √ | √ | √ |
| Venezuela | √ | √ | |
| Viet Nam | √ | √ | √ |

APPENDIX C TO SUBPART A—PARTIES TO THE MONTREAL PROTOCOL: ANNEX 1—ALL PARTIES—Continued

| Foreign state | Montreal protocol | London amendments | Copenhagen amendments |
|---|---|---|---|
| Yugoslavia | √ | | |
| Zaire | √ | √ | √ |
| Zambia | √ | √ | |
| Zimbabwe | √ | √ | √ |

## Annex 2—Nations Complying With, But Not Parties to, the Protocol—[Reserved]

## Appendix D to Subpart A—Harmonized Tariff Schedule Description of Products That May Contain Controlled Substances in Appendix A, Class I, Groups I and II

This Appendix is based on information provided by the Ozone Secretariat of the United Nations Ozone Environment Programme.** The Appendix lists available U.S. harmonized tariff schedule codes identifying headings and subheadings for Annex D products that may contain controlled substances.

The Harmonized Tariff Schedule of the United States uses a enumeration system to identify products imported and exported to and from the U.S. This system relies on a four digit heading, a four digit subheading and additional two digit statistical suffix to characterize products. The United States uses the suffix for its own statistical records and analyses. This Appendix lists only headings and subheadings.

While some can be readily associated with harmonized system codes, many products cannot be tied to HS classifications unless their exact composition and the presentation are known. It should be noted that the specified HS classifications represent the most likely headings and subheadings which may contain substances controlled by the Montreal Protocol. The codes given should only be used as a starting point; further verfication is needed to ascertain whether or not the products actually contain controlled substances.

**Category 1. Automobile and Truck Air Conditioning Units (whether incorporated in vehicles or not)**

There are no separate code numbers for air conditioning units specially used in automobiles and trucks. Although a code has been proposed for car air conditioners, it is not yet officially listed in the Harmonized Tariff Schedule (see category 2). The following codes apply to the vehicles potentially containing air conditioning units.

| *Heading/Subheading* | *Article Description* |
|---|---|
| 8701.(10, 20, 30, 90)*** | Tractors. |
| 8702 | Public-transport type passenger motor vehicles. |
| 8702.10 | With compression-ignition internal-combustion piston engine (diesel or semi-diesel). |
| 8702.90 | Other. |
| 8703 | Motor cars and other motor vehicles principally designed for the transport of persons (other than those of heading 8702), including station wagons and racing cars. |
| 8703.10 | Vehicles specially designed for traveling on snow; golf carts and similar vehicles; includes subheading 10.10 and 10.50. |
| 8703.(21, 22, 23, 24) | Other vehicles, with spark-ignition internal combustion reciprocating engines. |
| 8703.(31, 32, 33, 90) | Other vehicles, with compression-ignition internal combustion piston engine (diesel or semi-diesel). |
| 8704 | Motor vehicles for the transport of goods. |
| 8704.10.(10, 50) | Dumpers designed for off-highway use. |
| 8704.(21, 22, 23) | Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel). |
| 8704.(31, 32, 90) | Other, with compression-ignition internal combustion piston engine. |
| 8705 | Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, wreckers, mobile cranes, fire fighting vehicles, concrete mixers, road sweepers, spraying vehicles, mobile workshops, mobile radiological units). |
| 8705.10 | Crane lorries. |
| 8705.20 | Mobile drilling derricks. |
| 8705.30 | Fire fighting vehicles. |
| 8705.90 | Other. |

***At this time vehicle air conditioning units are considered components of vehicles or are classified under the general category for air conditioning and refrigeration equipment. Vehicles containing air conditioners are therefore considered products containing controlled substances.

**Category 2. Domestic and Commercial Refrigeration and Air Conditioning/Heat Pump Equipment**

Domestic and commercial air conditioning and refrigeration equipment fall primarily under headings 8415 and 8418.

| *Heading/Subheading* | *Article Description* |
|---|---|
| 8415 | Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated. |
| 8415.20 | Proposed code for air conditioning of a kind used for persons, in motor vehicles. |
| 8415.10.00 | A/C window or wall types, self-contained. |
| 8415.81.00 | Other, except parts, incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle. |
| 8415.82.00 | Other, incorporating a refrigerating unit— |

** ''A Note Regarding the Harmonized System Code Numbers for the Products Listed in Annex D.'' Adopted by Decision IV/15 paragraph 3, of the Fourth Meeting of the Parties in Copenhagen, 23–25 November, 1992.

| *Heading/Subheading* | *Article Description* |
|---|---|
| | Self-contained machines and remote condenser type air conditioners (not for year-round use). |
| | Year-round units (for heating and cooling). |
| | Air Conditioning evaporator coils. |
| | Dehumidifiers. |
| | Other air conditioning machines incorporating a refrigerating unit. |
| 8415.83 | Automotive air conditioners. |
| 8418 | Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than air conditioning machines of heading 8415; parts thereof. |
| 8418.10.00 | Combined refrigerator-freezers, fitted with separate external doors. |
| 8418.21.00 | Refrigerators, household type, Compression type. |
| 8418.22.00 | Absorption type, electrical. |
| 8418.29.00 | Other. |
| 8418.30.00 | Freezers of the chest type. |
| 8418.40 | Freezers of the upright type. |
| 8418.50.0040 | Other refrigerating or freezing chests, cabinets, display counters, showcases and similar refrigerating or freezing furniture. |
| 8418.61.00 | Other refrigerating or freezing equipment; heat pumps. |
| 8418.69 | Other— |
| | Icemaking machines. |
| | Drinking water coolers, self-contained. |
| | Soda fountain and beer dispensing equipment. |
| | Centrifugal liquid chilling refrigerating units. |
| | Absorption liquid chilling units. |
| | Reciprocating liquid chilling units. |
| | Other refrigerating or freezing equipment (household or other). |
| 8479.89.10 | Dehumidifiers (other than those under 8415 or 8424 classified as ''machines and mechanical appliances having individual functions, not specified or included elsewhere''). |

**Category 3. Aerosol Products**

An array of different products use controlled substances as aerosols and in aerosol applications. Not all aerosol applications use controlled substances, however. The codes given below represent the most likely classifications for products containing controlled substances. The product codes listed include ****:

- varnishes
- perfumes
- preparations for use on hair
- preparations for oral and dental hygiene
- shaving preparations
- personal deodorants, bath preparations
- prepared room deodorizers
- soaps
- lubricants
- polishes and creams
- explosives
- insecticides, fungicides, herbicides, disinfectants
- arms and ammunition
- household products such as footwear or leather polishes
- other miscellaneous products

| *Heading/Subheading* | *Article Description* |
|---|---|
| 3208 | Paints and varnishes ***** (including enamels and lacquers) based on synthetic polymers of chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium. |
| 3208.10 | Based on polyesters. |
| 3208.20 | Based on acrylic or vinyl polymers. |
| 3208.90 | Other. |
| 3209 | Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in an aqueous medium. |
| 3209.10 | Based on acrylic or vinyl polymers. |
| 3209.90 | Other. |
| 3210.00 | Other paints and varnishes (including enamels, lacquers and distempers) and prepared water pigments of a kind used for finishing leather. |
| 3212.90 | Dyes and other coloring matter put up in forms or packings for retail sale. |
| 3303.00 | Perfumes and toilet waters. |
| 3304.30 | Manicure or pedicure preparations. |
| 3305.10 | Shampoos. |
| 3305.20 | Preparations for permanent waving or straightening. |
| 3305.30 | Hair lacquers. |
| 3305.90 | Other hair preparations. |
| 3306.10 | Dentrifices. |
| 3306.90 | Other dental (this may include breath sprays). |
| 3307.10 | Pre-shave, shaving or after-shave preparations. |
| 3307.20 | Personal deodorants and antiperspirants. |
| 3307.30 | Perfumed bath salts and other bath preparations. |
| 3307.49 | Other (this may include preparations for perfuming or deodorizing rooms, including odoriferous preparations used during religious rites, whether or not perfumed or having disinfectant properties). |

**** Other categories of products that may contain controlled substances are listed below. EPA is currently working to match them with appropriate codes. They include: coatings and electronic equipment (e.g., electrical motors), coatings or cleaning fluids for aircraft maintenance, mold release agents (e.g. for production of plastic or elastomeric materials), water and oil repellant (potentially under HS 3402), spray undercoats (potentially under ''paints and varnishes''), spot removers, brake cleaners, safety sprays (e.g., mace cans), animal repellant, noise horns (e.g., for use on boats), weld inspection developers, freezants, gum removers, intruder alarms, tire inflators, dusters (for electronic and non-electronic applications), spray shoe polish, and suede protectors.

| *Heading/Subheading* | *Article Description* |
|---|---|
| 3307.90 | Other (this may include depilatory products and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included) |
| 3403 | Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants), and preparations of a kind used for the oil or grease treatment of textile materials, leather, fur skins or other materials, but excluding preparations containing, as basic constituents, 70 percent or more by weight of petroleum oils or of oils obtained from bituminous minerals. |
| 3402 | Organic surface-active agents (other than soap); surface-active preparations, washing preparations and cleaning operations, whether or not containing soap, other than those of 3401. |
| 3402.20 | Preparations put up for retail sale. |
| 3402.19 | Other preparations containing petroleum oils or oils obtained from bituminous minerals. |
| 3403 | Lubricating preparations consisting of mixtures containing silicone greases or oils, as the case may be. |
| 2710.00 | Preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations. |
| 3403.11 | Lubricants containing petroleum oils or oils obtained from bituminous minerals used for preparations from the treatment of textile materials, leather, fur skins or other materials. |
| 3403.19 | Other preparations containing petroleum oils or oils obtained from bituminous minerals. |
| 3405 | Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations excluding waxes of heading 3404. |
| 3405.10 | Polishes and creams for footwear or leather. |
| 3405.20 | Polishes for wooden furniture, floors or other woodwork. |
| 36 | Explosives. |
| 3808 | Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly papers). |
| 3808.10 | Insecticides. |
| 3808.20 | Fungicides. |
| 3808.30 | Herbicides, anti-sprouting products and plant growth regulators. |
| 3808.40 | Disinfectants. |
| 3808.90 | Other insecticides, fungicides. |
| 3809.10 | Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs and other products and preparations (for example, dressings and mordants) of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included, with a basis of amylaceous substances. |
| 3814 | Organic composite solvents and thinners (not elsewhere specified or included) and the prepared paint or varnish removers. |
| 3910 | Silicones in primary forms. |
| 9304 | Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading No. 93.07. Thus, aerosol spray cans containing tear gas may be classified under this subheading. |
| 0404.90 | Products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included. |
| 1517.90 | Edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading No. 15.16. |
| 2106.90 | Food preparations not elsewhere specified or included. |

***** Although paints do not generally use contain controlled substances, some varnishes use CFC 113 and 1,1,1,trichlorethane as solvents.

**Category 4. Portable Fire Extinguishers**

| *Heading/Subheading* | *Article Description* |
|---|---|
| 8424 | Mechanical appliances (whether or not hand operated) for projecting, dispersing, or spraying liquids or powders; fire extinguishers whether or not charged, spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines. |
| 8424.10 | Fire extinguishers, whether or not charged. |

**Category 5. Insulation Boards, Panels and Pipe Covers**

These goods have to be classified according to their composition and presentation. For example, if the insulation materials are made of polyurethane, polystyrene, polyolefin and phenolic plastics, then they may be classified Chapter 39, for ''Plastics and articles thereof''. The exact description of the products at issue is necessary before a classification can be given.******

| *Heading/Subheading* | *Article Description* |
|---|---|
| 3917.21 to 3917.39 | Tubes, pipes and hoses of plastics. |
| 3920.10 to 3920.99 | Plates, sheets, film, foil and strip made of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials. |
| 3921.11 to 3921.90 | Other plates, sheets, film, foil and strip, made of plastics. |
| 3925.90 | Builders' ware made of plastics, not elsewhere specified or included. |
| 3926.90 | Articles made of plastics, not elsewhere specified or included. |

****** This category may include insulating board for building panels and windows and doors. It also includes rigid appliance insulation for pipes, tanks, trucks, trailers, containers, train cars & ships, refrigerators, freezers, beverage vending machines, bulk beverage dispensers, water coolers and heaters and ice machines.

**Category 6. Pre-Polymers**

According to the Explanatory Notes to the Harmonized Commodity Description and Coding System, ''prepolymers are products which are characterized by some repetition of monomer units although they may contain unreacted monomers. Prepolymers are not normally used as such but are intended to be transformed into higher molecular weight polymers by further polymerization. Therefore the term does not cover finished products, such as di-isobutylenes or mixed polyethylene glycols with very low molecular weight. Examples are epoxides based with epichlorohydrin, and polymeric isocyanates.''

| *Heading/Subheading* | *Article Description* |
|---|---|
| 3901 | Pre-polymers based on ethylene (in primary forms). |
| 3902 | Pre-polymers based on propylene or other olefins (in primary forms). |
| 3903, 3907, 3909 | Pre-polymers based on styrene (in primary forms), epoxide and phenols. |

## Appendix E to Subpart A–Article 5 Parties

Algeria, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Benin, Bolivia, Bosnia and Hersegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea, Guyana, Honduras, India, Indonesia, Iran, Jamaica, Jordan, Kenya, Kiribati, Lebanon, Lesotho, Libyan Arab Jamahiriya, Macadonia, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Mozambique, Myranmar, Namibia, Nepal, Nicaragua, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Republic of Korea, Romania, Saint Kitts and Nevis, Saint Lucia, Saudi Arabia, Senegal, Seychelles, Singapore, Solomon Islands, Somoa, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Uruguay, Vanuatu, Venezuela, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe.

## Appendix F to Subpart A—Listing of Ozone–Depleting Chemicals

| Controlled substance | ODP | AT L | CLP | BLP |
|---|---|---|---|---|
| A. Class I: | | | | |
| 1. Group I: | | | | |
| $CFCl_3$-Trichlorofluoromethane (CFC–11) | 1.0 | 60.0 | 1.0 | 0.00 |
| $CF_2Cl_2$-Dichlorodifluoromethane (CFC–12) | 1.0 | 120.0 | 1.5 | 0.00 |
| $C_2F_3Cl_3$-Trichlorotrifluoroethane (CFC–113) | 0.8 | 90.0 | 1.11 | 0.00 |
| $C_2F_4Cl_2$-Dichlorotetrafluoroethane (CFC–114) | 1.0 | 200.00 | 1.8 | 0.00 |
| $C_2F_5Cl$-Monochloropentafluoroethane (CFC–115) | 0.6 | 400.0 | 2.0 | 0.00 |
| All isomers of the above chemicals | | [Reserved] | | |
| 2. Group II: | | | | |
| $CF_2ClBr$-Bromochlorodifluoromethane (Halon-1211) | 3.0 | 12 | 0.06 | 0.13 |
| | ..... | −18 | −.08 | −.03 |
| $CF_3Br$-Bromotrifluoromethane (Halon-1301) | 10.0 | 72 | 0.00 | 1.00 |
| | ..... | −107 | ..... | ..... |
| $C_2F_4Br_2$-Dibromotetrafluoroethane (Halon-2402) | 6.0 | 23 | 0.00 | 0.30 |
| | ..... | −28 | ..... | −.37 |
| All isomers of the above chemicals | | [Reserved] | | |
| 3. Group III: | | | | |
| $CF_3Cl$-Chlorotrifluoromethane (CFC–13) | 1.0 | 120 | 0.88 | 0.00 |
| | −250 | −1.83 | | |
| $C_2FCl_5$- (CFC–111) | 1.0 | 60 | 1.04 | 0.00 |
| | −90 | −1.56 | | |
| $C_2F_2Cl_4$- (CFC–112) | 1.0 | 60 | 0.90 | 0.00 |
| | −90 | −1.35 | | |
| $C_3FCl_7$- (CFC–211) | 1.0 | 100 | 1.76 | 0.00 |
| | −500 | −8.81 | | |
| $C_3F_2Cl_6$- (CFC–212) | 1.0 | 100 | 1.60 | 0.00 |
| | −500 | −7.98 | | |
| $C_3F_3Cl_5$- (CFC–213) | 1.0 | 100 | 1.41 | 0.00 |
| | −500 | −7.06 | | |
| $C_3F_4Cl_4$- (CFC–214) | 1.0 | 100 | 1.20 | 0.00 |
| | −500 | −6.01 | | |
| $C_3F_5Cl_3$ -(CFC–215) | 1.0 | 100 | 0.96 | 0.00 |
| | −500 | −4.82 | | |
| $C_3F_6Cl_2$- (CFC–216) | 1.0 | 100 | 0.69 | 0.00 |
| | −500 | −3.45 | | |
| $C_3F_7Cl$- (CFC–217) | 1.0 | 100 | 0.37 | 0.00 |
| | −500 | −1.87 | | |
| All isomers of the above chemicals | | [Reserved] | | |
| 4. Group IV: | | | | |
| $CCl_4$ -Carbon Tetrachloride | 1.1 | 50.0 | 1.0 | 0.00 |
| 5. Group V: | | | | |
| $C_2H_3Cl_3$-1,1,1 Trichloroethane (Methyl chloroform) | 0.1 | 6.3 | 0.11 | 0.00 |
| All isomers of the above chemical except 1,1,2-trichloroethane | | [Reserved] | | |
| F. Group VI: | | | | |
| CH3Br-Bromomethane (Methyl Bromide) | 0.7 | ..... | [Reserved] | ..... |
| G. Group VII: | | | | |
| $CHFBR_2$- | 1.00 | ..... | [Reserved] | |

| Controlled substance | ODP | AT L | CLP | BLP |
|---|---|---|---|---|
| $CHF_2Br$- (HBFC–22B1) | 0.74 | ..... | [Reserved] | ..... |
| $CH_2FBr$ | 0.73 | ..... | [Reserved] | |
| $C_2HFBr_4$ | 0.3—0.8 | ..... | [Reserved] | |
| $C_2HF_2Br_3$ | 0.5—1.8 | ..... | [Reserved] | |
| $C_2HF_3Br_2$ | 0.4—1.6 | ..... | [Reserved] | |
| $C_2HF_4Br$ | 0.7—1.2 | ..... | [Reserved] | |
| $C_2H_2FBr_3$ | 0.1—1.1 | ..... | [Reserved] | |
| $C_2H_2F_2Br_2$ | 0.2—1.5 | ..... | [Reserved] | |
| $C_2H_2F_3Br$ | 0.7—1.6 | ..... | [Reserved] | |
| $C_2H_3FBr_2$ | 0.1—1.7 | ..... | [Reserved] | |
| $C_2H_3F_2Br$ | 0.2—1.1 | ..... | [Reserved] | |
| $C_2H_4FBr$ | 0.07—0.1 | ..... | [Reserved] | |
| $C_3HFBr_6$ | 0.3—1.5 | ..... | [Reserved] | |
| $C_3HF_2Br_5$ | 0.2—1.9 | ..... | [Reserved] | |
| $C_3HF_3BR_4$ | 0.3—1.8 | ..... | [Reserved] | |
| $C_3HF_4Br_3$ | 0.5—2.2 | ..... | [Reserved] | |
| $C_3HF_5Br_2$ | 0.9—2.0 | ..... | [Reserved] | |
| $C_3HF_6Br$ | 0.7—3.3 | ..... | [Reserved] | |
| $C_3H_2FBR_5$ | 0.1—1.9 | ..... | [Reserved] | |
| $C_3H_2F_2BR_4$ | 0.2—2.1 | ..... | [Reserved] | |
| $C_3H_2F_3Br_3$ | 0.2—5.6 | ..... | [Reserved] | |
| $C_3H_2F_4Br_2$ | 0.3—7.5 | ..... | [Reserved] | |
| $C_3H_2F_5BR$ | 0.9—1.4 | ..... | [Reserved] | |
| $C_3H_3FBR_4$ | 0.08—1.9 | ..... | [Reserved] | |
| $C_3H_3F_2Br_3$ | 0.1—3.1 | ..... | [Reserved] | |
| $C_3H_3F_3Br_2$ | 0.1—2.5 | ..... | [Reserved] | |
| $C_3H_3F_4Br$ | 0.3—4.4 | ..... | [Reserved] | |
| $C_3H_4FBr_3$ | 0.03—0.3 | ..... | [Reserved] | |
| $C_3H_4F_2Br_2$ | 0.1—1.0 | ..... | [Reserved] | |
| $C_3H_4F_3Br$ | 0.07—0.8 | ..... | [Reserved] | |
| $C_3H_5FBr_2$ | 0.04—0.4 | ..... | [Reserved] | |
| $C_3H_5F_2Br$ | 0.07—0.8 | ..... | [Reserved] | |
| $C_3H_6FB$ | 0.02—0.7 | ..... | [Reserved] | |
| B. Class II: | | | | |
| $CHFCl_2$-Dichlorofluoromethane (HCFC–21) | [Reserved] | 2.1 | 0.03 | 0.00 |
| $CHF_2Cl$-Chlorodifluoromethane (HCFC–22) | 0.05 | 15.3 | 0.14 | 0.00 |
| $CH_2FCl$-Chlorofluoromethane (HCFC–31) | [Reserved] | 1.44 | 0.02 | 0.00 |
| $C_2HFCl_4$- (HCFC–121) | [Reserved] | 0.6 | 0.01 | 0.00 |
| $C_2HF_2Cl_3$- (HCFC–122) | [Reserved] | 1.4 | 0.02 | 0.00 |
| $C_2HF_3Cl_2$- (HCFC–123) | 0.02 | 1.6 | 0.016 | 0.00 |
| $C_2HF_4Cl$- (HCFC–124) | 0.02 | 6.6 | 0.04 | 0.00 |
| $C_2H_2FCl_3$- (HCFC–131) | [Reserved] | 4.0 | 0.06 | 0.00 |
| $C_2H_2F_2Cl_2$- (HCFC–132b) | [Reserved] | 4.2 | 0.05 | 0.00 |
| $C_2H_2F_3Cl$- (HCFC–133a) | [Reserved] | 4.8 | 0.03 | 0.00 |
| $C_2H_3FCl_2$- (HCFC–141b) | 0.12 | 7.8 | 0.10 | 0.00 |
| $C_2H_3F_2Cl$- (HCFC–142b) | 0.06 | 19.1 | 0.14 | 0.00 |
| $C_3HFCl_6$- (HCFC–221) | [Reserved] | ..... | ..... | 0.00 |
| $C_3HF_2Cl_5$- (HCFC–222) | [Reserved] | ..... | ..... | 0.00 |
| $C_3HF_3Cl_4$- (HCFC–223) | [Reserved] | ..... | ..... | 0.00 |
| $C_3HF_4Cl_3$- (HCFC–224) | [Reserved] | ..... | ..... | 0.00 |
| $C_3HF_5Cl_2$- (HCFC–225ca) | [Reserved] | 1.5 | 0.01 | 0.00 |
| | ..... | −1.7 | | |
| (HCFC–225cb) | [Reserved] | 5.1 | 0.04 | 0.00 |
| $C_3HF_6Cl$- (HCFC–226) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_2FCl_5$- (HCFC–231) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_2F_{24}$- (HCFC–232) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_2F_3Cl_3$- (HCFC–233) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_2F_4Cl_2$- (HCFC–234) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_2F_5Cl$- (HCFC–235) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_3FCl_4$- (HCFC–241) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_3F_2Cl_3$- (HCFC–242) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_3F_3Cl_2$- (HCFC–243) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_3F_4Cl$- (HCFC–244) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_4FCl_3$- (HCFC–251) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_4F_2Cl_2$- (HCFC–252) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_4F_3Cl$- (HCFC–253) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_5FCl_2$- (HCFC–261) | [Reserved] | ..... | ..... | 0.00 |
| $C_2H_5F_2Cl$- (HCFC–262) | [Reserved] | ..... | ..... | 0.00 |
| $C_3H_6FCl$- (HCFC–271) | [Reserved] | ..... | ..... | 0.00 |
| All isomers of the above chemicals | [Reserved] | | | |

## Appendix G to Subpart A—UNEP Recommendations for Conditions Applied to Exemption for Laboratory and Analytical Uses

1. Laboratory purposes are identified at this time to include equipment calibration; use as extraction solvents, diluents, or carriers for chemical analysis; biochemical research; inert solvents for chemical reactions, as a carrier or laboratory chemical and other critical analytical and laboratory purposes. Production for laboratory and analytical purposes is authorized provided that these laboratory and analytical chemicals shall contain only controlled substances manufactured to the following purities:

| | | |
|---|---|---|
| CTC (reagent grade) ..... | 99.5 | |
| 1,1,1- trichloroethane ..... | 99.0 | |
| CFC–11 ..... | ..... | 99.5 |
| CFC–13 ..... | ..... | 99.5 |
| CFC–12 ..... | ..... | 99.5 |
| CFC–113 ..... | ..... | 99.5 |
| CFC–114 ..... | ..... | 99.5 |
| Other w/ Boiling P>20° ..... | C99.5 | |
| Other w/ Boiling P<20° ..... | C99.0 | |

2. These pure, controlled substances can be subsequently mixed by manufacturers, agents or distributors with other chemicals controlled or not controlled by the Montreal Protocol as is customary for laboratory and analytical uses.

3. These high purity substances and mixtures containing controlled substances shall be supplied only in re-closable containers or high pressure cylinders smaller than three litres or in 10 millilitre or smaller glass ampoules, marked clearly as substances that deplete the ozone layer, restricted to laboratory use and analytical purposes and specifying that used or surplus substances should be collected and recycled, if practical. The material should be destroyed if recycling is not practical.

4. Parties shall annually report for each controlled substance produced: the purity; the quantity; the application, specific test standard, or procedure requiring its uses; and the status of efforts to eliminate its use in each application. Parties shall also submit copies of published instructions, standards, specifications, and regulations requiring the use of the controlled substance.

## Appendix H to Subpart A—Clean Air Act Amendments of 1990 Phaseout Schedule for Production of Ozone-Depleting Substances

| Date | Carbon tetra-chloride (percent) | Methyl chloro-form (per-cent) | Other class sub-stances (percent) |
|---|---|---|---|
| 1994 ..... | 70 | 85 | 65 |
| 1995 ..... | 15 | 70 | 50 |
| 1996 ..... | 15 | 50 | 40 |
| 1997 ..... | 15 | 50 | 15 |
| 1998 ..... | 15 | 50 | 15 |
| 1999 ..... | 15 | 50 | 15 |
| 2000 ..... | ..... | 20 | |
| 2001 ..... | ..... | 20 | |

[FR Doc. 95–10616 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[FRL–5199–2]**

## Protection of Stratospheric Ozone: Amendment to Transshipment Provision in Final Rule Accelerating the Phaseout of Ozone-Depleting Substances

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA is proposing stricter requirements for transshipments of substances that deplete stratospheric ozone from foreign countries through the United States to foreign destinations. The proposed amendment would require a person to petition the Environmental Protection Agency (EPA) prior to the export of a controlled ozone-depleting substance to the United States for transshipment. EPA is proposing the amendment due to new information that the current regulation is being abused to illegally introduce controlled substances into U.S. commerce. The proposed amendment, at the request of industry, will protect the economic interests of legitimate businesses by deterring the illegal diversion of transshipments of controlled substances into U.S. commerce.

**DATES:** Written comments on this proposal must be received by June 9, 1995, at the address below. A public hearing, if requested, will be held in Washington, D.C. If such a hearing is requested, it will be held on May 25, 1995, and the comment period would then be extended to June 26, 1995. Anyone who wishes to request a hearing should call Tom Land at 202/233–9185 by May 17, 1995. Interested persons may contact the Stratospheric Ozone Protection Hotline at 1–800–296–1996 to see if a hearing will be held and to obtain the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

**ADDRESSES:** Comments on this proposal must be submitted to the Air Docket Office, Public Docket No. A–92–13, Room M–1500, Environmental Protection Agency, 401 M St., SW, Washington, DC 20406. Additional comments and materials supporting this rulemaking are contained in Docket No. A–92–13. The Docket may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday, at the address above. A reasonable fee may be charged for copying Docket materials.

**FOR FURTHER INFORMATION CONTACT:** Tom Land, Environmental Protection Agency, Office of Atmospheric Programs, Stratospheric Protection Division, (6205–J), 401 M St., SW, Washington, DC 20460, (202) 233–9185. The Stratospheric Ozone Protection Hotline at 1–(800)–296–1996 can also be contacted for further information of a copy of this rule.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Under the current regulatory requirements, published in the **Federal Register** on December 10, 1993, a person who transships a controlled substance from one foreign country through the United States to another foreign destination does not need allowances. The Environmental Protection Agency (EPA) implements a program of allowances to limit and monitor the production, import and export of controlled substances in the United States.

In the proposed rulemaking published in the **Federal Register** on November 10, 1994 (59 FR 56275), EPA proposed clarifications to the definition of transshipment. In response to that proposal several companies suggested EPA create a permitting process for transshipments to combat the known use of transshipment as a means of illegally importing controlled substances. Since that time, EPA has confirmed that transshipments are a large and common loophole for the illegal entry of controlled substances into U.S. commerce. EPA and U.S. Customs criminal investigators have identified transshipment as one of the most likely schemes for the illegal import of controlled substances into the United States. As recently as January 1995, three men were arrested for conspiracy to divert material into U.S. interstate commerce that they alleged was being transshipped. Legitimate U.S. companies that are worldwide leaders in the transition to alternatives are being adversely affected by illegal imports, and have requested such a change to discourage this activity.

### II. Amendment to the Transhipment Requirements

To eliminate the use of transhipments as a loophole for the illegal import of controlled substances, EPA is proposing that a person must petition the Agency to tranship class I substances. The proposed petition process for transhipments would parallel the petition process created to combat the illegal imports of used, recycled and reclaimed controlled substances.

The proposed petition process for transhipments would require a person to submit a petition to EPA to tranship each shipment through the United States at least 15 working days prior to the date the ship is to leave the foreign country prior to arriving in the U.S. to tranship. The petition must include the following information:

- The name and quantity of the controlled substance to be transhipped,
- The name and address of the importer, the importer I.D. number, the contact person, and the phone and fax numbers,
- Name and address of the exporter and/or foreign owner of the material,
- The U.S. port of entry for the import, the expected date of shipment and the vessel transporting the chemical,
- The intended foreign destination of the transhipped material, the anticipated date of export from the U.S., U.S. port of export, and, when practical, the anticipated vessel that will transport the chemical.

As with petitions to import used controlled substances, EPA will have 15 working days to review the petition to tranship. If during the 15 working days, EPA decides to object to the petition or to request additional information, the person submitting the petition will be notified. If EPA needs additional information, the importer may re-submit the petition with the requested information. If EPA does not object to the particular petition within the 15 working days, the person may proceed with the transhipment and assume it is permitted. EPA will then notify the U.S. Customs Service of the anticipated arrival of the shipments that will be transhipped to another foreign destination.

EPA believes that a shipment-by-shipment petition process for transhipments will most effectively counter illegal imports and restore market-based incentives for the transition to alternatives to controlled ozone-depleting substances. Shipments to the United States considered Transportation and Export (T&E) are not subject to the proposed petition requirements.

### III. Summary of Supporting Analysis

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this amendment to the final rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available for public comment an initial regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The Agency originally published an RFA to accompany the August 12, 1998 final rule (53 FR 30566) that placed the initial limits on the production and consumption of CFCs and halons. The RFA was also updated as Appendix G of the Regulatory Impact Analysis for the regulations implementing the phaseout schedule of section 604 of the Clean Air Act Amendments of 1990. The Addendum to the Regulatory Impact Analysis was further updated in 1993 to examine the impact of the acceleration of the phaseout and the phaseout of HCFCs on small businesses. The analysis in the Addendum indicated that the actions were not expected to have a substantial impact on small entities.

EPA believes that any impact that today's proposed amendment will have on the regulated community will serve only to provide relief from otherwise applicable regulations, and will therefore limit the negative economic impact associated with the regulations previously promulgated under Section 604 and 606. Although almost all businesses participants in the phaseout program for ozone-depleting substances are large businesses, today's proposed amendment reduces reporting or recordkeeping burdens that might possibly impact small businesses. Therefore, the proposed amendment is expected to have minimal if any impact on small entities.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulation promulgated in this notice of proposed rulemaking will not have any additional negative economic impacts on any small entities.

*C. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* and assigned control number, OMB 2060–0170. An Information Collection Request document has been prepared by EPA (ICR No. 1432.15) and a copy may be obtained from Sandy Farmer, Information Policy Branch, U.S. EPA, 401 M St. SW. (2136), Washington, DC 20460 or by calling (202)–260–2740.

The information collection requirements for this final rule has an estimated reporting burden averaging 23.3 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

Send comments regarding the burden estimate of any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, U.S. EPA, 401 M St., SW., (2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*D. Enhancing the Intergovernmental Partnership Under Executive Order 12875*

In compliance with Executive Order 12875 we have involved state, local, and tribal governments in the development of this rule to the extent they are affected by these requirements. EPA is conducting an outreach program to facilitate the transition for state, local and tribal governments to ozone-friendly alternatives.

*E. Unfunded Mandate Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 250 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

The net effect of all the amendments to the accelerated phaseout rule is a reduction in regulatory burden for regulated entities. This proposed amendment is designed to confront illegal activities which are costing legitimate U.S. businesses and the government millions of dollars in lost revenue. Because this proposed amendment to the rule is estimated to result in the expenditure of less than $100 million in any one year by state, local, and tribal governments, or the private section, the Agency has neither prepared a budgetary impact statement nor addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small government will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: April 19, 1995.

**Carol Browner,**

*Administrator.*

Part 82 is proposed to be amended as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7671–671q.

## Subpart A—Production and Consumption Controls

2. Section 82.4 is amended by adding paragraph (g), to read as follows:

### § 82.4 Prohibitions.

* * * * *

(g) Effective January 1, 1995, no person may import, at any time in any control period, a used class I controlled substance, or tranship a controlled substance through the United States, without petitioning the Administrator as under § 82.13(g)(2) for authorization.

* * * * *

3. Section 82.13 is amended by adding paragraph (g)(2) to read as follows:

### § 82.13 Record-keeping and reporting requirements.

* * * * *

(g) * * *

(1) * * *

(2) *Petitioning—Importers of Used Controlled Substances and Transhipments.* For each shipment of a used controlled substance (contaminated, recycled or reclaimed material), or each transhipment of a class I controlled substance, an importer must submit to the Administrator, at least 15 working days before the shipment is to leave the port of export, the following information in a petition:

(i) The name and quantity of the used controlled substance to be imported (including material that has been recycled or reclaimed) or of the controlled substance to be transhipped;

(ii) The name and address of the importer, the importer ID number, the contact person, and the phone and fax numbers;

(iii) Name and address of the source(s) of the used controlled substance, including a description of the previous use(s), when possible;

(iv) Name and address of the exporter and/or foreign owner of the material,

(v) The U.S. port of entry for the import, the expected date of arrival of the shipment and the vessel transporting the chemical;

(vi) The intended use of the used controlled substance;

(vii) The intended foreign destination of the transhipped material, the anticipated date of export from the U.S., U.S. port of export, and, when practical, the anticipated vessel that will transport the chemical.

* * * * *

[FR Doc. 95–10615 Filed 5–9–95; 8:45 am]

BILLING CODE 6560–50–M

federal register

Wednesday
May 10, 1995

# Part III

# Department of Agriculture

## Agricultural Marketing Service

## 7 CFR Part 1007

## Milk in the Georgia and Certain Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rule

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1007**

**[Docket Nos. AO–366–A36, et al.; DA–93–21]**

# Milk in the Georgia and Certain Other Marketing Areas; Decision on Proposed Amendments to Marketing Agreements and to Orders

| 7 CFR part | Marketing area | Docket No. |
|---|---|---|
| 1007 ..... | Georgia ..... | AO–366–A36 |
| 1093 ..... | Alabama-West Florida. | AO–386–A14 |
| 1094 ..... | New Orleans-Mississippi. | AO–103–A56 |
| 1096 ..... | Greater Louisiana | AO–257–A43 |
| 1099 ..... | Paducah, Kentucky. | AO–183–A45 |
| 1108 ..... | Central Arkansas | AO–243–A46 |

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

**ACTION:** Proposed rule.

**SUMMARY:** This decision combines five Federal milk order marketing areas with unregulated counties in Arkansas, Georgia, Mississippi, and Tennessee to form the Southeast marketing area. The decision is based on industry proposals to merge the individual marketing areas so as to more equitably divide the markets' proceeds in what essentially has become a single, large market with significantly overlapping sales and procurement areas.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

The proposed amendments have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the entry of the ruling.

## Prior Documents in This Proceeding

Notice of Hearing: Issued September 3, 1993; published September 10, 1993 (58 FR 47653).

*Supplemental Notice of Hearing:* Issued October 13, 1993; published October 15, 1993 (58 FR 53436).

*Extension of Time for Filing Briefs:* Issued January 24, 1994; published February 3, 1994 (59 FR 5132).

*Recommended Decision:* Issued November 21, 1994; published November 29, 1994 (59 FR 61070).

*Extension of Time for Filing Exceptions:* Issued December 27, 1994; published January 3, 1995 (60 FR 65).

## Preliminary Statement

A public hearing was held to consider proposed amendments to the marketing agreements and the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR Part 900), in Atlanta, Georgia, on November 1–5, 1993. Notice of such hearing was issued on September 3, 1993, and published September 10, 1993 (58 FR 47653) and a supplemental notice of hearing was issued October 13, 1993, and published October 15, 1993 (58 FR 53436).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on November 21, 1994, issued a recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the modifications contained in this final decision. Certain sections of this final decision differ from the recommended decision only by discussing comments that were received, correcting obvious typographical errors, or adding footnotes to reflect new information, such as a cooperative merger. These sections include marketing area, unit pooling, producer, producer-handler, balancing plants, and seasonal adjustment to Class III and III–A prices. Other sections have been revised substantially and/or contain actual changes in order provisions. Sections which fall into this category include producer milk, product prices, Class III price, Class II price, plant location adjustments, and base-excess plan. In addition to these changes, the Map of the Southeast marketing area and the Map Guide (i.e., Table No. 1) have been revised to reflect the new pricing zones, a clarifying paragraph has been added at the end of the discussion of lock-in provision, and a discussion has been added at the end of the findings and conclusions regarding Motions to Reopen the Hearing.

## Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Interstate commerce, merger of marketing areas under one order, and expansion of the marketing area.[1] The handling of milk in the proposed merged and expanded marketing area is in the current of interstate commerce and directly burdens or obstructs interstate commerce in milk and milk products. Interstate commerce is involved in both the procurement and sales of fluid milk and dairy products by handlers operating plants in the proposed marketing area.

The record evidence clearly shows the movement of bulk milk from Georgia to Alabama and Tennessee; from Alabama to Georgia, Mississippi, Louisiana, and Tennessee; from Louisiana to Texas, Mississippi, and Alabama; from Texas to Arkansas, Louisiana and Mississippi; from Tennessee to Georgia, Alabama,

[1] The changes to this section include an updated map of the marketing area and an updated Table 1.

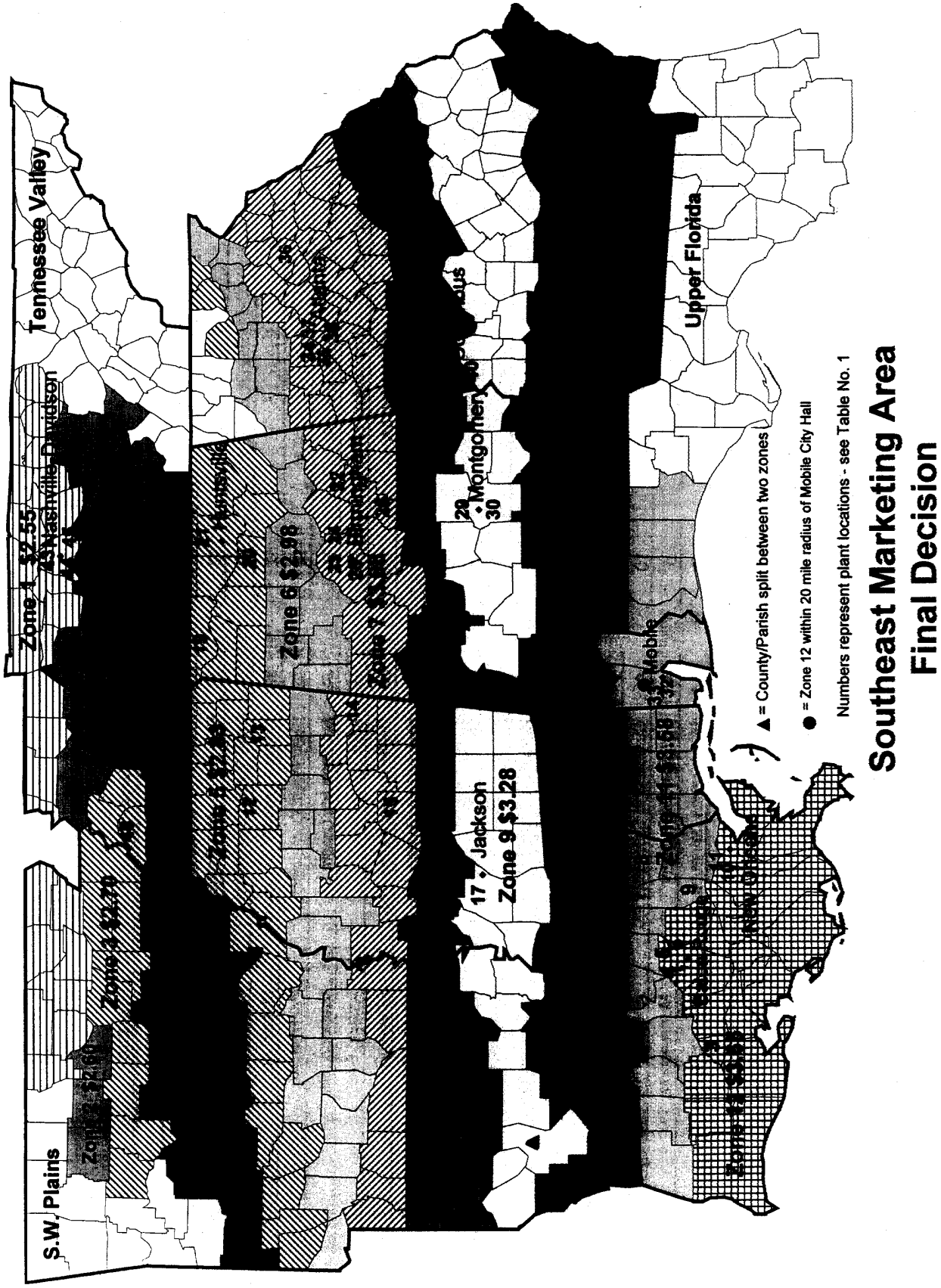
Kentucky, and Mississippi; from Kentucky to Alabama, Mississippi, and Tennessee; and from Arkansas to Georgia, Tennessee, and Mississippi. In addition, the record indicates that packaged fluid milk products regularly move across States into each of the separate marketing areas involved in this proceeding.

The proposed merged and expanded marketing area, designated as the ''Southeast'' marketing area, is shown on the map entitled ''Southeast Marketing Area.'' The map has been modified to reflect changes in pricing zones that are discussed under ''plant location adjustments.'' Table No. 1 is a map guide for the plants that corresponds to the numbers shown on the map. The table has been modified to delete four plants: McClendon Cheese (Zone 4), Meadow Gold, Gadsden (Zone 5), Flav-O-Rich, Montgomery (Zone 8), and Meadow Gold, Nashville (Zone 2). In addition, one new plant has been added to the table: Publix Supermarkets, Zone 7, which is scheduled to commence operations this spring.

The proposed Southeast marketing area includes the present adjacent marketing areas of Orders 7, 93, 94, and 96; the Central Arkansas (Order 108) marketing area; the northeastern Georgia county of Rabun; the northwestern Mississippi counties of Canola, De Soto, Lafayette, Marshall, Tate, and Tunica; all of the territory within the State of Tennessee that is not included within the Tennessee Valley Federal marketing area; and all of the presently unregulated counties in the State of Arkansas. The proposed merged order would use the part number for the present Georgia order, part 1007. The amended Part 1007, upon issuance, would supersede Parts 1093, 1094, 1096, and 1108.

Although the present five orders would no longer exist upon effectuation of the Southeast order, this merger action is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with respect to milk handled prior to the effective date of the merger. Such procedures, which would need to be carried out after the merger date, include the announcement of certain class prices, submission of reports, computation of uniform prices, payment of obligations and verification activities. The provisions of the merged order would apply only to that milk handled after the effective date of the merger.

BILLING CODE 3410–02–P




BILLING CODE 3410–02–C

TABLE NO. 1.—MAP GUIDE FOR THE SOUTHEAST MARKETING AREA

| No. | Plant name | Location | Zone |
|---|---|---|---|
| 1 | Foremost Dairy, Inc | Shreveport, LA | 8 |
| 2 | Borden, Inc | Monroe, LA | 8 |
| 3 | Borden, Inc | Lafayette, LA | 12 |
| 4 | Borden, Inc | Baton Rouge, LA | 12 |
| 5 | Dairy Fresh of LA | Baker, LA | 12 |
| 6 | Kleinpeter Farms Dairy | Baton Rouge, LA | 12 |
| 7 | Mid-America Dairymen, Inc | Kentwood, LA | 11 |
| 8 | Mid-America Dairymen, Inc | Franklinton, LA | 11 |
| 9 | Superbrand Dairy Products | Hammond, LA | 11 |
| 10 | Barbe's Dairy | Westwego, LA | 12 |
| 11 | Schepps-Foremost | New Orleans, LA | 12 |
| 12 | Avent's Dairy, Inc | Oxford, MS | 5 |
| 13 | Barber Pure Milk Company | Tupelo, MS | 5 |
| 14 | Brookshire Dairy Products | Columbus, MS | 7 |
| 15 | LuVel Dairy Products, Inc | Kosciusko, MS | 7 |
| 16 | Flav-O-Rich | Canton, MS | 8 |
| 17 | Borden, Inc | Jackson, MS | 9 |
| 18 | Dairy Fresh Corporation | Hattiesburg, MS | 10 |
| 19 | Shoals Cheese | Florence, AL | 5 |
| 20 | Dasi Products, Inc | Decatur, AL | 5 |
| 21 | Meadow Gold Dairies, Inc | Huntsville, AL | 5 |
| 22 | Barber Pure Milk Company | Oxford, AL | 7 |
| 23 | Baker and Sons Dairy | Birmingham, AL | 7 |
| 24 | Barber Pure Milk Company | Birmingham, AL | 7 |
| 25 | Barber Ice Cream | Birmingham, AL | 7 |
| 26 | Flav-O-Rich Ice Cream | Sylacauga, AL | 7 |
| 27 | Dairy Fresh Ice Cream | Greensboro, AL | 8 |
| 28 | McClendon Cheese | Uniontown, AL | 7 |
| 29 | Superbrand Dairy Products | Montgomery, AL | 9 |
| 30 | Barber Pure Milk Company | Montgomery, AL | 9 |
| 31 | Dairy Fresh Corporation | Cowarts, AL | 10 |
| 32 | Barber Pure Milk Company | Mobile, AL | 12 |
| 33 | Dairy Fresh Corporation | Prichard, AL | 12 |
| 34 | Southern Ice Cream | Marrietta, GA | 7 |
| 35 | Kraft General Foods | Atlanta, GA | 7 |
| 36 | Peeler Jersey Farms | Athens, GA | 7 |
| 37 | New Atlanta Dairies, Inc | Atlanta, GA | 7 |
| 38 | Publix Supermarkets, Inc | Atlanta, GA | 7 |
| 39 | Borden, Inc | Macon, GA | 8 |
| 40 | Kinnett Dairies, Inc | Columbus, GA | 8 |
| 41 | Kinnett Ice Cream | Columbus, GA | 8 |
| 42 | Hershey Chocolate, USA | Savannah, GA | 10 |
| 43 | Fleming Companies, Inc | Nashville, TN | 1 |
| 44 | Purity Dairies, Inc | Nashville, TN | 1 |
| 45 | Cumberland Creamery, Inc | Antioch, TN | 1 |
| 46 | Heritage Farms Dairy | Murfreesboro, TN | 2 |
| 47 | Mid-America Dairymen, Inc | Lewisburg, TN | 2 |
| 48 | Turner Dairies | Covington, TN | 3 |
| 49 | Forest Hill Dairy | Memphis, TN | 4 |
| 50 | Harbin Mix | Memphis, TN | 4 |
| 51 | Borden, Inc | Little Rock, AR | 4 |
| 52 | Coleman Dairy | Little Rock, AR | 4 |
| 53 | Gold Star Dairy, Inc | Little Rock, AR | 4 |
| 54 | Humphrey's Dairy | Hot Springs, AR | 4 |

The marketing area proposed herein is a combination of several of the proposals presented at the hearing. A group of four cooperative associations, comprised of Dairymen, Inc., Gulf Dairy Association, Inc.,[2] Southern Milk Sales, Inc., and Carolina Virginia Milk Producers Association, Inc., proposed the merger of the marketing areas of Orders 7, 93, 94, 96, together with the former Nashville, Tennessee (Order 98), marketing area,[3] and the four unregulated Tennessee counties of Franklin, Lincoln, Moore, and Van Buren. In this decision, these cooperatives will be referred to as the ''cooperative coalition,'' and their proposal will be referred to as Proposal No. 1. At the time of the hearing, these groups represented approximately 54 percent of the producers and 55 percent of the milk pooled under Orders 7, 93, 94, and 96.

Malone & Hyde Dairy (aka Fleming Dairy), Nashville, Tennessee, proposed expanding the area proposed by the cooperative coalition by including the one remaining unregulated county in

[2] Effective March 1, 1994, September 1, 1994, and February 1, 1995, respectively, Gulf Dairy Association, Dairymen, Inc., and Southern Milk Sales became part of Mid-America Dairymen, Inc. (Mid-Am).

[3] Official notice is taken of the termination of the former Memphis, Tennessee (Part 1097), and Nashville, Tennessee (Part 1098) Federal milk marketing orders effective July 31, 1993. The marketing areas of these former orders may be found in §§ 1097.2 and 1098.2 of 7 CFR, revised as of January 1, 1992 and 1993, respectively.

Georgia (i.e., Rabun County), the six unregulated counties between the Tennessee Valley marketing area and the former Nashville marketing area (four of which were also included in Proposal No. 1), the former Memphis, Tennessee (Order 97), marketing area, and the remaining unregulated Tennessee counties that are bordered on the east by former Order 98, on the west by former Order 97, on the north by Order 99, and on the south by Order 94. Malone & Hyde Dairy hereinafter will be referred to as ''Fleming Dairy,'' and their proposal will be referred to as Proposal No. 9.

Arkansas Dairy Cooperative Association, Inc., which also will be referred to as ''ADCA,'' proposed including the Central Arkansas marketing area and the former Memphis marketing area in the merged order proposed by the cooperative coalition. Their proposal will be referred to as Proposal No. 2.

Finally, Associated Milk Producers, Inc., or ''AMPI,'' proposed and testified in support of a proposal (i.e., Proposal No. 13) to merge the former Memphis marketing area with the Paducah, Kentucky, and Central Arkansas marketing areas to form a ''Mid-South'' marketing area. Under this proposal, the marketing area also would include all presently unregulated counties in Arkansas, the unregulated Missouri county of Dunklin, and the two unregulated Texas counties of Bowie and Cass.

*Testimony in support of Proposal No. 1.* The Vice President of Dairymen, Inc., testified on behalf of the cooperative coalition in support of Proposal No. 1.

The thrust of his testimony was that fluid milk processors in the proposed merged marketing area had increasingly expanded their distribution to serve larger geographic areas and, as a result, a larger order is now needed to maintain market stability, to insure that producers in the proposed marketing area would be able to share pro rata in the classified uses of their milk, and to provide assurance to handlers that their competitors were paying at least the order's minimum prices regardless of where their milk supply originated.

He also stated that a merged order was in the public's interest because it would establish orderly marketing conditions for producers and handlers in the marketing area and assure a continuing, adequate supply of high-quality milk.

The Chairman of the Louisiana Dairy Advisory Committee of the Louisiana Farm Bureau Federation testified that the proposal was significant because it could eliminate price disparities among producers in the Southeast, facilitate the movement of milk to where it is needed, and provide a more equitable sharing among producers of higher-valued fluid milk sales.

The division manager for milk procurement for The Kroger Company testified that Heritage Farms Dairy, a Kroger Company plant located in Murfreesboro, Tennessee, also expressed qualified support for the merger of milk orders in the Southeast, but said that Proposal No. 1 fell short of addressing all the problems or answering all the questions facing Federal milk marketing orders in the Southeast. He said that markets not contained in this proceeding present challenges that need to be addressed at a future hearing.

*Testimony in opposition to Proposal No. 1.* A consultant for Barber Pure Milk Company and Dairy Fresh Corporation testified that Barber Pure Milk Company, a handler under Orders 7, 93, and 94, and Dairy Fresh Corporation, a handler under Orders 7, 93, 94, and 96, opposed Proposal No. 1 because it did not include Orders 5 (Carolina) and 11 (Tennessee Valley). He stated that, in May 1993, 52 percent of all Class I sales in the Order 7 marketing area were made by plants pooled on other orders, with 26.4 percent and 11.6 percent from Orders 5 and 11, respectively.

With respect to raw milk procurement, the Barber/Dairy Fresh spokesman testified that Order 7 and 93 handlers competed with Order 5 and 11 handlers for their milk supply. Because of the intermingling of producers among these orders, the milk of some producers is shipped alternatively between Orders 7 and 5 handlers, he said, and differences in utilization in these markets result in different pay prices for milk of neighboring producers, creating instability in the milk supply. Further, to create a large marketing area including most of five or six states with small orders nearby could lead to undesirable pooling practices, he added.

A representative for Kinnett Dairies (Kinnett) in Columbus, Georgia, testified that Kinnett purchased raw milk from a group of independent producers located in Georgia, Alabama, and Tennessee and also purchased a portion of its raw milk needs from Carolina-Virginia Milk Producers Association, Charlotte, North Carolina. He stated that while Kinnett generally supported the concept of merging Federal Orders 7, 93, 94, and 96, with the area covered by the terminated Nashville order, it was opposed to Proposal No. 1 because it did not include the Tennessee Valley and Carolina orders (Orders 11 and 5, respectively). He explained that in August 1993—after the Kroger plant at Murfreesboro, Tennessee, and the Fleming Dairy plant at Nashville, Tennessee, became regulated under Order 7—35.4 percent of the Class I disposition on Order 7 was marketed by other order distributing plants. He pointed out that this was a higher percentage of other order Class I sales than that accounted for by any of the other orders involved in the merger proceeding.

*Testimony in support of Proposal No. 9.* The assistant operations manager for Fleming Dairy, Nashville, Tennessee, testified in support of Proposal No. 9. He explained that the Fleming Company operated two distributing plants: One plant located in Nashville, Tennessee, and a second plant located in Baker, Louisiana, which is jointly owned with Dairy Fresh of Alabama.

The Fleming spokesman testified that Fleming's Nashville plant distributed approximately 25 million pounds of Class I and Class II dairy products per month in the former Nashville and Memphis Federal order marketing areas, as well as in the marketing areas of Order 46 (Louisville-Lexington-Evansville), Order 99 (Paducah), Order 108 (Central Arkansas), Order 106 (Southwest Plains), Order 94 (New Orleans-Mississippi), Order 93 (Alabama-West Florida), Order 6 (Upper Florida), Order 7 (Georgia), Order 5 (Carolina), and Order 11 (Tennessee Valley). He stated that Fleming procured most of its raw milk supply from dairy farmers located in central Tennessee and south central Kentucky, with approximately 55 percent of Fleming's raw milk supply purchased from Kentucky dairy farmers and 45 percent purchased from Tennessee dairy farmers. In addition to purchasing milk from independent producers, Fleming purchases raw milk from Carolina-Virginia Milk Producers and other dairy cooperatives and proprietary handlers, he added.

The witness testified that a southeast merger which does not include the Chattanooga area will result in blend price differences between the Tennessee Valley order and the new Southeast order which will cause problems where the two orders' procurement areas overlap. He said the Department should address this potential problem of blend price differences by considering the merger of the Louisville order with the Tennessee Valley order and possibly the Carolina order in the very near future and that the implementation of such a merger should coincide with the merger of other Federal orders in the Southeast.

The Fleming spokesman stated that the former Memphis marketing area should be included in the merged order

because Fleming Dairy has significant sales in that area. However, the merged order should not include several Kentucky counties in former Order 98, he said, because those counties do not have a significant level of milk sales from Nashville distributing plants. He stated there were no distributing plants in that area, but there was a cheese plant there that could attach unnecessary milk to the market if that plant were in the marketing area.

*Testimony in support of Proposal No. 2 and in opposition to Proposal 13.* The general manager of the Arkansas Dairy Cooperative Association, Incorporated, testified that ADCA, which has 113 dairy farmer members located within the State of Arkansas, was formed in 1991 by its members to provide an alternative to Associated Milk Producers, Inc. (AMPI), the only outlet then available for their milk. He indicated that ADCA sold its milk to the Borden, Incorporated, plant in Little Rock, the Turner Dairies plants in Memphis and Covington, Tennessee, and the Turner Dairy plant in Fulton, Kentucky.

The witness stated that ADCA supported the merger of Orders 7, 93, 94, 96, 97, 98, and 108, and that ADCA also supported the inclusion of presently unregulated counties south and west of the present Central Arkansas marketing area, as well as two unregulated Arkansas counties (Mississippi and Crittenden) on the eastern edge of the Central Arkansas marketing area. He said that the sales of Little Rock plants in the former Memphis area and the overlap of procurement areas for the two markets supported the adoption of ADCA's proposal.

The ADCA spokesman indicated that a larger merged market would provide market and regulatory stability for ADCA in the future. He emphasized that since ADCA's formation, AMPI had successfully terminated the Memphis order, attempted to terminate the Paducah order, terminated the base-excess plan on Order 108, and now was attempting to establish a new Mid-South order which it could dominate.

The witness stated that with AMPI's proposed Mid-South order, ADCA would be at the whim of AMPI management with respect to whether there would be an order at all, or for how long there would be an order. He said that situation would be intolerable for ADCA and would create highly disorderly marketing conditions. He concluded that a seven-market (i.e., including former Orders 97 and 98) merged order would eliminate this problem.

A dairy farmer from Guy, Arkansas, who farms 300 acres and milks 200 cows, also testified in support of the inclusion of Central Arkansas in the merged southeastern order and in opposition the AMPI's proposal to form a Mid-South order. The witness, who is the immediate past president of the Board of Directors of Arkansas Dairy Cooperative Association, Inc., stated that he was speaking on behalf of himself, the ADCA Board of Directors, and the 113 members of ADCA.

*Testimony in support of Proposal No. 13.* A spokesman representing the Associated Milk Producers, Incorporated, Southern Region, Arlington, Texas, stated that his testimony in support of Proposal No. 13 was on behalf of the Southern Region of AMPI, Mid-America Dairymen, Inc. (Mid-Am), and Dairymen, Inc. (DI), co-proponents of Proposals 13, 14, and 15.

The AMPI spokesman testified that in September 1993 AMPI pooled 18.4 million pounds of milk in the Central Arkansas market, a quantity which represented 50.1 percent of the milk pooled on the order during that month. He said the 387 AMPI members who produced that milk represented about 69 percent of the total number of dairy farmers on the market during September.

According to the witness, AMPI supplied the Turner Dairy Covington plant, which, since the termination of Order 97, had been a partially regulated distributing plant. He said that in September 1993 AMPI supplied about 3.2 million pounds of milk to the Covington plant but could not divert the milk of any producer from the plant because it was not a fully regulated facility.

The witness also testified that AMPI provided supplemental milk to the Turner plant in Fulton, Kentucky, jointly with D.I. and Mid-Am. During September 1993, he said the three cooperatives supplied about 5.2 million pounds of the milk required by Turner to operate the Fulton facility.

The AMPI representative said that the supply situation at the Fulton facility had changed significantly in recent years. He noted that through 1982 the plant was completely supplied and balanced by cooperative milk and that beginning in 1983 a total of 4.41 percent of the milk came from independent producers. The percentage of supply to the Fulton facility increased every year since then, he said, except for 1986. For the first 10 months of 1993, the percentage of independent supply was almost 47 percent of the handlers' needs, he added. He stressed that although the Turner plant had changed its source of supply over the last 10 years, the facility continued to rely on cooperative associations to balance its supply.

The AMPI witness pointed out that throughout 1993 most of the Fulton supply originated from Kentucky, Missouri, and Tennessee. In September 1993, he noted, 93.5 percent of the Fulton supply came from these areas.

The spokesman also observed that Exhibits 5 and 31, which contain data introduced by the market administrators of the respective orders, indicate a significant overlap in procurement among the areas proposed for merger. He noted that in May 1993, for instance, 8.2 million pounds of the 22.1 million pounds of producer milk pooled on the Memphis order came from Arkansas producers (just over 37 percent) and that another 30 percent came from nearby Tennessee counties from which 6.6 million pounds of milk were pooled on the Central Arkansas order.

With respect to the Central Arkansas order, the witness testified that in May 1993 about 6.5 percent of the producer milk originated in nearby counties in Kentucky and Tennessee while 69.1 percent of the producer milk pooled on the order originated in Arkansas. Most of the remainder of the milk originated in Missouri and Texas, he said.

The AMPI spokesman testified that route disposition in the Memphis area has generally consisted of fluid milk products from about ten handlers under other Federal orders. He said that handlers regulated under Orders 99 and 108 consistently distribute fluid milk products on routes in the Memphis area.

In Central Arkansas, route disposition from handlers regulated under other Federal orders, including Memphis and Paducah, has ranged from 28.7 percent in January 1990 to 49.6 percent in March 1993, according to the witness. He noted that specific percentages for route disposition by Order 97 and 99 handlers cannot be included because less than three handlers are involved.

With respect to the Paducah order, the witness said that at the current time the order operates as an individual-handler pool and that, as such, the order promotes instability among similarly situated producers because blend prices under the Paducah order exceed significantly those of surrounding orders. Surrounding markets must carry the burden of balancing the supply of the single plant operator under that order, he said.

The witness testified that blend prices generated under the Paducah order are unreasonable given the significant overlap of supply and distribution patterns that exists today. He said the

situation was very similar to that of the Milwaukee individual handler pool prior to its inclusion in the Chicago Regional pool in 1968 and referenced the final decision (33 FR 7516) in that proceeding.

The AMPI spokesman testified that a situation similar to that described in the 1968 decision is currently at play in the Paducah milk market. He said that under the proposed Mid-South order, however, producers will share pro rata in the returns from the sale of milk utilized in all classes; all producers will carry their fair share of lower prices of reserve milk not needed at any particular time for fluid purposes.

The witness indicated that the fluid sector of the dairy industry has evolved to fewer but larger handlers who distribute their products over an increasingly larger territory. He predicted that this trend will likely continue in the future. He concluded that whenever consolidation of areas is considered, the Department must look at the area where the significant majority of the overlap occurs in sources and in distribution to delineate merged marketing areas.

*Testimony in opposition to Proposal No. 13.* Two dairy farmers from Martin, Tennessee (Weakley County), testified in opposition to the merger of Order 99 with any other order. Both of these witnesses indicated that they were independent dairy farmers delivering their milk to the Turner plant in Fulton, Kentucky. They stated that they were opposed to making any change to Order 99 because it would lower the price to dairy farmers delivering milk to the Fulton plant.

*Testimony in support of other merger combinations.* A consultant appearing on behalf of Southern Foods Group, Inc. (SFG), testified that SFG supported the widest possible merger of orders under consideration. He said the proposed marketing area should include not only the area covered by Proposal 1, but also the marketing area proposed for inclusion by both Proposals 2 and 9. He stated that there was ample evidence of milk handlers from those additional areas (i.e., former Order 97 and Order 108) competing with handlers in the marketing area encompassed by Proposal 1 to support the inclusion of those areas in the merged order.

This witness testified that SFG owns and operates six fluid processing plants in Texas and Louisiana. The plants owned by SFG in Louisiana are the Foremost operation in Shreveport (regulated under Order 96) and the Brown's Velvet plant in New Orleans, which is regulated by Order 94.

The witness introduced a table showing the ratio of other order and partially regulated plants to pool distributing plants. He pointed out that the table showed that the ratio is greater than 2:1 for all of the present orders under consideration at this hearing, except for Greater Louisiana. The Georgia order had a better than 6:1 ratio, he said, while Memphis and Central Arkansas had 5:1 and 3:1 ratios, respectively.

The SFG spokesman stated that there was ample justification for a single large order based solely on the existing inter-order handler competition, the ratio of nonpool to pool plants in the separate orders, and the volume of out-of-area shipments of packaged products as shown in hearing exhibits. He said the Department should not create a new merged order without including all areas which are logically part of it, particularly if that would leave small orders right on the border of the new large order.

The witness also focused on the ability of the market administrator to collect and disseminate meaningful statistical data as a basis for supporting a merger of orders. He pointed out that confidentiality rules do not permit the market administrator to publish data for a zone or an order if less than three regulated handlers are included in that zone or order. More meaningful data and less cumbersome data can be released for a merged marketing area, he concluded.

The witness remarked that while SFG did not contest the idea of including Shreveport, Lake Charles, and the rest of western Louisiana in the new merged marketing area, it was important to note that handlers in Shreveport and Lake Charles sell significant quantities of milk into east Texas in competition with east Texas handlers and that east Texas handlers sell significant quantities of milk into western Louisiana.

He also pointed out that the record data showed that significant quantities of bulk milk from Texas were received at Louisiana plants and that the surplus Texas milk was available for reserve use in Louisiana. The existence of that reserve supply, he said, is a factor in the analysis of proper pricing in the new proposed order.

A spokesman testifying on behalf of Gold Star Dairy, Little Rock, Arkansas, stated that Gold Star supported the merger of the Federal orders based on the proposals before the Secretary. He emphasized that the proposed mergers in this hearing ''were not big enough for Gold Star,'' commenting that Gold Star's flexibility would be limited if it were not included in a much larger order.

Goldstar's representative said that based upon September marketings, Gold Star would be pooled under the Texas order in the event of a five-order merger and would be regulated under the proposed Gulf States order in the event of a seven-market merger. It would not be pooled under the proposed Mid-South order based upon sales, he added. He cautioned, however, that much of Gold Star's sales are to wholesalers so that the loss of one customer could determine under which order the plant is regulated.

The witness stated that Gold Star has a manufacturing plant in Clovis, New Mexico, in addition to its bottling plant in Little Rock. He said that the company also has a bottling agreement with the Flav-O-Rich Company to distribute products out of their Atlanta, Georgia, facility.

The witness indicated that Gold Star did not wish to be a high-utilization plant regulated and pooled in a low-utilization order because eventually it would be required to pay more for its milk. He added that Gold Star does not wish to be part of an order with a base-excess plan because it would limit Gold Star's flexibility in obtaining supplemental supplies during the base-excess months. He said that the proposed base-excess plan, coupled with the proposed ''dairy farmer for other markets'' provision, potentially builds barriers to the movement of milk. Gold Star's unique location outside the marketing area makes it vulnerable to those barriers, he said. He remarked that the fact that such provisions are needed to protect year-round supplies from pool riders indicates that the merger is too small.

*The record supports a Southeast Federal milk marketing order.* The evidence in this record clearly indicates the need to merge all but one of the separate orders in this proceeding into a ''Southeast'' order that will encompass all of the existing marketing areas of these orders as well as the presently unregulated territory specified at the outset of this discussion. The basis for reaching this conclusion is threefold: (a) There is a clear overlap in milk production areas—not between every order with every other order, but significant enough to link the orders together; (b) there is a clear overlap in the distribution of packaged fluid milk products by handlers regulated under the individual orders; and (c) there is an obvious need to insure marketing stability for all producers within the proposed marketing area. Since there was overwhelming support for the merger of Orders 7, 93, 94, 96, and former Order 98, and a clear unanimity

of opinion expressed with regard to the overlap of milk production and sales in those areas, this discussion will focus primarily on the need to combine Proposals 1, 2, 9, and 13 to form one order comprised of existing orders 7, 93, 94, 96, and 108, the two orders terminated in 1993 (Orders 97 and 98), and the unregulated territory in Georgia, Tennessee, and Arkansas.

*a. Overlap in Milk Production Areas*

The overlap in milk production areas among two or more orders often results in producer unrest and market instability when blend prices differ to any extent between the orders. This happens because producers are generally aware of the prices being received by their neighbors and seek to find the most lucrative market for themselves. Sometimes, this may result in a producer leaving the cooperative association with which he or she has been associated or switching from one proprietary handler to another. It may also result in producers entering into business relationships with handlers of questionable financial stability, which could lead to the problem of handler defaults described on the hearing record.

The difference in two orders' blend prices at a particular location may be caused by a variety of factors, including order provisions, institutional factors, and the location of surplus manufacturing facilities, as well as obvious differences in class prices.

In the States of Louisiana, Mississippi, Alabama, and Georgia, the blend prices are greatly influenced by the presence of DI's butter-powder manufacturing plant at Franklinton, Louisiana, and Mid-America Dairymen Association's cheese plant at Kentwood, Louisiana, both of which are Order 94 pool plants that process surplus milk into lower-valued Class III and III-A products. The influence of these plants on blend prices in this region is evident when comparing the difference in Class I utilization between Order 94 and its neighbors: Orders 7, 96, and 93. As can be seen from Table 2, in 1991 the average Class I utilization for Order 94 was 69.7 percent, compared to 74.6 percent for Order 7, 80.4 percent for Order 96, and 79.7 percent for Order 93. A similar comparison of the utilization percentages contained in Table 2 shows that this pattern continued in 1992 and during the first seven months of 1993.

TABLE 2.—PERCENT CLASS I UTILIZATION OF PRODUCER MILK BY FEDERAL ORDER, 1991–93

| | Order 7 | Order 93 | Order 94 | Order 96 | Order 97 | Order 98 | Order 99 | Order 108 |
|---|---|---|---|---|---|---|---|---|
| 1991 | 74.6 | 79.7 | 69.7 | 80.4 | 73.7 | 80.2 | 78.6 | 73.3 |
| 1992 | 76.5 | 76.9 | 68.2 | 78.9 | 69.2 | 80.8 | 82.6 | 63.9 |
| 1993 [1] | 80.4 | 76.1 | 59.1 | 69.9 | 59.8 | 80.4 | 87.4 | 58.7 |

[1] January–July.

The extremely high utilization of the Paducah market (Order 99), which increased from 78.6 percent in 1991 to 87.4 percent during the first nine months of 1993, can be attributed to the fact that there is only one handler, Turner Dairy, with a pool plant under that order and to the institutional changes that have occurred in that market, particularly the growth of a non-member milk supply and a corresponding reduction in cooperative association milk. Consequently, the single plant operator in that market has an incentive to keep the utilization as high as possible so as to generate a high blend price for its non-member producers. From a different perspective, it means keeping any reserve supplies associated with the plant to a minimum. This situation is far different from a market with manufacturing facilities, such as Order 94, which is handling a disproportionate share of the region's reserve supplies. It is noteworthy that as the Class I utilization of the Paducah order increased by 19 points from 1991 to 1993, the Class I utilizations of the neighboring Central Arkansas and Memphis orders dropped by 14 points.

The differences in blend prices resulting from these utilizations can be seen in Table 3, which compares average blend prices for 1991, 1992, and the first 7 months of 1993. With respect to Orders 97, 99, and 108, it should be noted that the higher Class I utilization for the Paducah order more than offset the fact that its Class I price was 38 cents lower than the Class I price for Orders 108 and 97.

TABLE 3.—BLEND PRICES BY FEDERAL ORDER 1991–93

[In dollars]

| | Order 7 | Order 93 | Order 94 | Order 96 | Order 97 | Order 98 | Order 99 | Order 108 |
|---|---|---|---|---|---|---|---|---|
| 1991 | [1] 13.35 | [1] 13.71 | 13.51 | [1] $13.84 | 12.88 | 12.75 | 12.67 | 12.90 |
| 1992 | [1] 14.64 | [1] 14.83 | 14.63 | [1] 15.01 | 13.94 | 13.99 | 14.02 | 13.86 |
| 1993 [2] | [1] 14.37 | [1] 14.52 | 14.05 | [1] 14.32 | 13.31 | 14.03 | 13.62 | 13.32 |

[1] Order 7 price adjusted to southern zone, Order 93 price adjusted to Zone IV, and Order 96 price adjusted to Zone III to be comparable to Order 94, which is reported for the highest-priced, southernmost zone.
[2] January–July.

The blend prices shown in Table 3 for Orders 7, 93, and 96 were adjusted to the highest-priced, southernmost zone, to be comparable with the Order 94 blend price, which is reported in that way. The lower utilization of Order 94 is evidenced by its blend price, which is far below that of Order 93 on the east or Order 96 on the west.

When price differences are related to location, there may be adequate grounds for justifying such differences. When they occur within a common production area, however, they cause market instability. Data in this record show many common production areas which are subject to significantly different blend prices.

Production data in the record shows a heavy production area in southern Mississippi and in the ''Florida parishes'' of Louisiana north of New Orleans. Milk from this area moves to Orders 96, 94, and 93. The record also indicates there is a very pronounced overlap in production areas between Orders 7 and 93 throughout northern

Georgia. The production area for the Georgia market also overlaps the procurement area for the former Nashville market in southeastern Tennessee. In addition, the counties throughout central Tennessee provide a significant share of the milk supply for Order 93 as well as former Order 98.

Table 4 shows the number of counties in various States from which producer milk was supplied to various combinations of orders. The table shows, for example, that in May 1993 there were 14 Arkansas counties from which producer milk was supplied to Orders 97 and 108; that the Memphis and Paducah orders shared a common supply area in four Tennessee counties, four Kentucky counties, three Arkansas counties, and four counties in south central Missouri; and that, in aggregate, the production area for Orders 93 and 98 overlapped in 38 counties in four different States. Order combinations that were left out of the table—for example, 108/96—had no production counties in common.

In each of the overlapping production areas referenced above, a pricing disparity problem either presently exists or potentially could exist as a result of the difference in the blend prices prevailing in those areas. A single merged marketing area will largely eliminate this problem, but it will, of course, persist to some extent wherever the merged marketing area abuts a neighboring marketing area (i.e., the Texas order, the Southwest Plains order, the Louisville-Lexington-Evansville order, the Tennessee Valley order, the Carolina order, and the Upper Florida order).

TABLE 4: NUMBER OF COUNTIES IN DESIGNATED STATES PROVIDING MILK TO SPECIFIED FEDERAL ORDER MARKETS IN MAY 1993

| State | 97/108 | 97/98 | 97/99 | 97/94 | 108/94 | 108/99 | 7/93 | 93/94 | 94/96 | 93/98 | 7/98 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Arizona | 14 | ..... | 3 | 3 | 3 | 3 | ..... | ..... | ..... | ..... | ..... |
| Missouri | 8 | ..... | 4 | 4 | 5 | 4 | ..... | ..... | ..... | ..... | ..... |
| Tennessee | ..... | 1 | 4 | 2 | ..... | ..... | ..... | 1 | ..... | 26 | 5 |
| Kentucky | ..... | ..... | 4 | 2 | ..... | ..... | ..... | ..... | ..... | 2 | ..... |
| Massachusetts | ..... | ..... | ..... | 2 | ..... | ..... | ..... | 20 | 7 | ..... | ..... |
| Georgia | ..... | ..... | ..... | ..... | ..... | ..... | 33 | ..... | ..... | 6 | 14 |
| Alabama | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 2 | ..... | 4 | ..... |
| Florida | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 1 | ..... | ..... | ..... |
| Louisana | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 1 | 19 | ..... | ..... |
| Texas | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | 1 | ..... | ..... |
| Total | 22 | 1 | 15 | 13 | 8 | 7 | 33 | 25 | 27 | 38 | 19 |

*b. Overlap in Sales Distribution Areas*

Market instability may occur when handlers in one marketing area have significant distribution in another order's marketing area. Problems may arise because of Class I price misalignment between orders resulting in an undue price advantage for a handler in another market. Problems also arise when a handler in one marketing area has enough sales in another order's marketing area to become regulated under such other order. If the blend prices differ significantly at the plant's location, the handler may be forced to pay over-order charges to maintain its local milk supply, which, in turn, could put it at a competitive disadvantage vis-a-vis its competitors in the marketing area where it is located.

Data in the record indicate a significant overlap in distribution areas within the proposed Southeast marketing area.

In August 1993, 37.5 percent of the route disposition in Order 108 came from plants regulated under Orders 7, 49 (Indiana), 99, 106, and 126. These sales came from the following plants:

| Plant/location | Federal order |
|---|---|
| Fleming Dairy, Nashville, Tennessee. | 7. |
| Heritage Farms, Murfreesboro, Tennessee. | 7. |
| Gold Star Dairy, Little Rock, Arkansas. | 126. |
| Turner Dairies, Fulton, Kentucky | 99. |
| Others | 106, 126, 49. |

In July 1993, during the last month of the Memphis order, the percentage of route disposition represented by other order plants was 30 percent of the total route disposition in the marketing area. These sales came from the following plants:

| Plant/location | Federal order |
|---|---|
| Fleming Dairy, Nashville, Tennessee. | 98. |
| Heritage Farms, Murfreesboro, Tennessee. | 98. |
| Gold Star Dairy, Little Rock, Arkansas. | 126. |
| Turner Dairies, Fulton, Kentucky | 99. |
| Avents Dairy, Oxford, Mississippi | 94. |
| Borden, Inc., Little Rock, Arkansas. | 108. |
| Others | 106, 126, 49. |

The Paducah market also has an extremely high ratio of Class I sales represented by other order and partially regulated plants. In July 1993, 67 percent of the Class I sales in the Paducah marketing area originated from other order and partially regulated plants. These sales came from the following plants:

| Plant/location | Federal order |
|---|---|
| Fleming Dairy, Nashville, Tennessee. | 98. |
| Heritage Farms, Murfreesboro, Tennessee. | 98. |
| Purity Dairies, Nashville, Tennessee. | 98. |
| Others | 32, 46, 49. |

In the Georgia marketing area, other order and partially regulated distributing plants accounted for nearly 34 million pounds of Class I sales in August 1993. These sales, which represented roughly 28 percent of the total Class I sales that month, came from the following plants:

| Plant/location | Federal order |
|---|---|
| Baker and Sons Dairy, Inc., Birmingham, AL. | 93. |
| Barber Pure Milk Company, Birmingham, AL. | 93. |
| Barber Pure Milk Company, Mobile, AL. | 93. |

| Plant/location | Federal order |
|---|---|
| Dairy Fresh Corporation, Cowarts, AL. | 93. |
| Flav-O-Rich, Inc., Montgomery, AL. | 93. |
| Meadow Gold Dairies, Inc., Gadsden, AL. | 93. |
| Superbrand Dairy Products, Montgomery, AL. | 93. |
| Gold Star Dairy, Inc., Little Rock, AR. | 126. |
| Others | 2, 5, 6, 11, 13, 49, 131. |

In the Alabama-West Florida market, Class I sales accounted for by other order and partially regulated plants in August 1993 totaled 15.4 million pounds or 17 percent of total Class I sales that month. These sales came from the following plants:

| Plant/location | Federal order |
|---|---|
| Borden, Inc., Macon, Georgia | 7. |
| Flav-O-Rich, Inc., Atlanta, GA | 7. |
| Fleming Companies, Inc., Nashville, TN. | 7. |
| Heritage Farms Dairy, Murfreesboro, TN. | 7. |
| Flav-O-Rich, Inc., Atlanta, GA | 7. |
| Kinnett Dairies, Inc., Columbus, GA. | 7. |
| Superbrand Dairy Products, Inc., Greenville, SC. | 7. |
| Avent's Dairy, Inc., Oxford, MS | 94. |
| Barber Pure Milk Company, Tupelo, MS. | 94. |
| Borden, Inc., Jackson, MS | 94. |
| Turner Dairies, Fulton, Kentucky | 99. |
| Gold Star Dairy, Inc., Little Rock, AR. | 126. |
| Others | 11, 46, 49, 131. |

Class I sales by other order and partially regulated distributing plants in August 1993 accounted for 12 million pounds of Class I sales in the New Orleans-Mississippi marketing area or roughly 22 percent of the total Class I sales that month. These sales came from the following plants:

| Plant/location | Federal order |
|---|---|
| Fleming Companies, Inc., Nashville, TN. | 7. |
| Heritage Farms Dairy, Inc., Murfreesboro, TN. | 7. |
| Barber Pure Milk Company, Mobile, AL. | 93. |
| Brookshire Dairy Products Co., Columbus, MS. | 93. |
| Dairy Fresh Corporation, Prichard, AL. | 93. |
| Flav-O-Rich, Montgomery, AL | 93. |
| Meadow Gold Dairies, Inc., Huntsville, AL. | 93. |
| Superbrand Dairy Products, Montgomery, AL. | 93. |
| Borden, Inc., Lafayette, Louisiana | 96. |
| Dairy Fresh of LA, Baker, LA | 96. |
| Kleinpeter Farms Dairy, Baton Rouge, LA. | 96. |
| Turner Dairies, Fulton, KY | 99. |
| Forest Hill Dairy, Memphis, TN | 108. |
| Gold Star Dairy, Inc., Little Rock, AR. | 126. |
| Others | 13, 49, 139. |

Finally, in August 1993, other order and partially regulated distributing plants accounted for 16.3 million pounds of Class I sales in the Greater Louisiana marketing area or roughly 40 percent of the total Class I sales that month. These sales came from the following plants:

| Plant/location | Federal order |
|---|---|
| Borden, Inc., Baton Rouge, LA | 94. |
| Borden, Inc., Jackson, MS | 94. |
| Brown's Velvet Dairy Prod., Inc., New Orleans, LA. | 94. |
| Dairy Fresh Corp., Hattiesburg, MS. | 94. |
| Superbrand Dairy Products, Inc., Hammond, LA. | 94. |
| Borden, Inc., Conroe, TX | 126. |
| Borden, Inc., Tyler, TX | 126. |
| Gold Star Dairy, Inc., Little Rock, AR. | 126. |
| Southwest Dairy, Tyler, TX | 126. |
| Vandervoorts Dairy, Fort Worth, TX. | 126. |

The Class I sales data discussed above indicate clearly that each of the markets involved in this proceeding is closely integrated with neighboring Federal order markets. However, it still leaves open the question of how best to combine these orders because sales data alone do not provide sufficient guidance to answer this question.

*c. Market Stability*

The third factor that must be considered in determining the appropriate marketing area is the need to insure market stability, a prime objective of the Agricultural Marketing Agreement Act.

The record testimony paints a picture of a rapidly evolving industry. The marketing of milk products continues to change with ever-wider distribution areas, centralized operations, inter-handler marketing agreements, two-way containers, back-hauling arrangements, plant closings, and changes in ownership, among others. As handlers widen their distribution patterns, blend prices are buffeted by the changing Class I utilization that a large plant can cause in a marketwide pool. The shifting of a plant from one order to another can, and does, result in handlers being placed in a position where they can no longer hold on to their milk supply. Most of these changes were described in the record; some were not. Official notice is taken of the closing of Guth Dairy in Lake Charles, Louisiana; Acadia Dairy in Thibodaux, Louisiana; and Walker Resources in Metairie, Louisiana; and the minority financial interest acquired by Mid-America Dairymen, Inc., in Southern Foods Group effective February 17, 1994.

On the producer side, there have also been significant changes in marketing arrangements. Producers have left their cooperative associations, formed new cooperative associations, and merged existing cooperatives. Official notice was previously taken of the merger of Gulf Dairy Cooperative Association and Mid-America Dairymen, Inc., effective March 1, 1994.

The record evidence in this proceeding—specifically, the overlap of procurement and sales areas, together with the need for stability in a rapidly changing marketing environment—lead us to conclude that orderly marketing will best be served by a market that is large enough to equitably share the region's reserve supplies, to provide regulatory stability for the plants in this area, and to provide producers with the freedom to market their milk in whatever manner and to whomever they wish.

Although there are many instances of plants that are located in one market, but regulated in another market, there are also many price alignment problems that result from these situations.[4] It is best, if possible, to avoid them. The Gold Star plant would enjoy a more stable marketing environment if it were located in the Southeast marketing area, instead of the Mid-South marketing area proposed by AMPI.

The larger Southeast market will give producers in the Central Arkansas and former Memphis markets more choices in marketing their milk. At present, there are a limited number of distributing plants available to producers in those markets and those that are available are primarily supplied

[4] Official notice is taken of the suspension of certain provisions of the Greater Louisiana order effective November 1, 1993, (58 FR 63031) to keep a Lake Charles, Louisiana, plant from becoming regulated under the Texas order, under which the plant would have experienced a sharp reduction in its blend price.

by AMPI. Under the merged order, however, producers will have a choice of many different handlers and cooperatives through which to market their milk. With a uniform set of regulations applicable to the larger market, it will be easier for producers to supply different handlers at different times of the year without fear of being shut out of the market because of separate base and excess plans that are now, or have in the past, been applicable to several of the individual orders involved in the merger.

As indicated in the record, the Paducah market is, for all intents and purposes, an individual handler pool. Producers that are fortunate enough to have a market with Turner Dairies enjoy extremely high blend prices and a stable marketing environment. Their neighbors, on the other hand, who are not part of Turner Dairies' nonmember supply but instead belong to cooperative associations such as AMPI, Mid-Am, or ADCA, must move their milk to whatever market is available to them and, according to the testimony of Turner producers who have compared milk checks, receive less money for their milk. This is not the essence of a marketwide pool: To preserve a market for one group of producers, while their neighbors, who balance the Class I needs of the market, must ship their milk hundreds of miles away and receive lower prices for it. In fact, the fluid market and the reserve market should be shared equally among all producers in a marketwide pool.

The Paducah market is not equitably distributing returns to producers supplying that market and should be considered for incorporation within a larger market, but it should not be incorporated in the proposed Southeast market. An analysis of the Federal order exhibits entered into the record indicates that in August 1993 there were 11.5 million pounds of milk pooled under Order 99, of which 88.4 percent was Class I. Since Turner Dairies' Fulton, Kentucky, plant was the only pool plant that month, its Class I sales were approximately 10.2 million pounds (i.e., $.884 \times 11.5$). The exhibits also show that there were 2.0 million pounds of Class I sales in the marketing area from the Fulton plant, leaving about 8.2 million which were distributed in other marketing areas. Although the exact distribution of these 8.2 million pounds was not shown in the record, it is known from the exhibits that there was distribution from this plant into the Central Arkansas, Memphis, New Orleans-Mississippi, and Alabama-West Florida marketing areas. If this pattern of distribution were to continue under the proposed Southeast order, the Fulton, Kentucky, plant would become regulated under that order.

According to the data in the hearing record, in July 1993—the most recent month in which separate data for the Nashville market was available—33 percent of the Class I sales in the Paducah marketing area were made by Turner Dairies, Fulton, Kentucky; 22 percent of the sales were made by handlers regulated under Order 32; 18 percent of the Class I sales were made by Nashville area plants; and the remaining 27 percent of Class I sales were made by plants that were regulated under Orders 46 or 49 (Indiana), or by handlers that were partially regulated or unregulated. With this distribution pattern, the Paducah marketing area may fit more appropriately with one of these other orders than it does with the proposed Southeast marketing area.

The Memphis market in July 1993, its last month of operation, resembled the Paducah market in having only Turner Dairies plants. In addition to its Memphis plant, Turner Dairies also operated a plant at Covington, Tennessee, 36 miles northeast of Memphis. Unlike the Paducah market, a majority of the other order sales in the Memphis market are from handlers that would be regulated under the proposed Southeast order. Also, there is a significant overlap in procurement areas between the Memphis order and the Central Arkansas and New Orleans-Mississippi orders. There is clearly sufficient evidence in the record to warrant regulation of the Memphis area as part of the Southeast marketing area.

In August 1993, the Central Arkansas market had four fully regulated distributing plants: The Borden, Inc., plant in Little Rock; the Forest Hill Dairy Plant (i.e., Turner Dairies) that was regulated under the Memphis order in July 1993; Coleman Dairy, Inc., in Little Rock; and Humphrey's Dairy in Hot Springs, 55 miles southwest of Little Rock.

Before it shifted to the Texas order in January 1993, the Gold Star plant also was regulated under the Central Arkansas order. During December, its last month under Order 108, there were 49.1 million pounds of producer milk pooled under that order; in January the pounds of producer milk dropped to 24.9 million pounds. There was a similar drop in Class I producer milk, from 30.2 million pounds in December 1992 to 15.4 million pounds in January 1993.

In August 1993, there were 38.4 million pounds of producer milk pooled under the Central Arkansas order, including the producer milk of Forest Hill Dairy (i.e., Turner Dairies), which had been pooled under Order 97. Combining this amount with the 11.5 million pounds of producer milk pooled under the Paducah market that month yields a combined total of approximately 50 million pounds, which would have made it one of the smallest Federal order markets that month.

The point of this comparison is to show that, if the AMPI proposal had been adopted, it would have created a market that would not have provided the marketing stability that is needed in this area. In fact, it is very likely that the proposed Mid-South market would have been the subject of another lengthy merger proceeding within the near future.

AMPI and Mid-Am filed exceptions objecting to the denial of the proposal for a Mid-South marketing area. Mid-Am stated that there is very little overlap of distribution and procurement between the proposed Mid-South marketing area and the other areas included in the Southeast marketing area. In addition, Mid-Am argues that the minimal overlap in distribution between Central Arkansas and the rest of the Southeast marketing area is from two plants: the Gold Star plant in Little Rock that distributes into the Greater Louisiana and New Orleans-Mississippi marketing areas and the Fleming Dairies plant in Nashville that distributes into the Central Arkansas and former Memphis marketing areas.

The findings in this decision specifically note that the Gold Star plant has distribution in the Georgia marketing area and the Alabama-West Florida marketing area, in addition to the Greater Louisiana and New Orleans-Mississippi marketing areas. The former Memphis market not only receives distribution from the Fleming Dairies plant at Nashville, but also from the Heritage Farms plant at Murfreesboro, Tennessee (Order 7), and Avents Dairy at Oxford, Mississippi (Order 94). Finally, the Heritage plant and the Fleming plant distribute fluid milk products into the Central Arkansas marketing area.

The overlap in procurement between Orders 7, 93, 94, and 96 with Orders 108, 97, and 99 is not as great as it is among other marketing areas being merged. Nevertheless, there is an overlap in procurement between Order 94 and former Order 97 (13 counties in May 1993) and between Orders 94 and 108 (8 counties in May 1993). Moreover, the need to merge these marketing areas is justified by a combination of factors (distribution, procurement, and

marketing stability) that justifies the inclusion of Central Arkansas and Memphis in the Southeast marketing area.

The Southeast marketing area adopted in this decision encompasses all of the areas involved in this proceeding, with the exception of the Kentucky portion of the former Nashville, Tennessee, order, the Texas counties of Cass and Bowie, the Missouri county of Dunklin, and the Paducah marketing area. This excluded area (other than the already discussed Paducah area), and the previously unregulated area in Tennessee, Georgia, and Arkansas that has been included are discussed below.

*Kentucky portion of former Nashville marketing area.* The Kentucky counties of Allen, Barren, Metcalf, Monroe, Simpson, and Warren, and the Fort Campbell military reservation should not be included in the Southeast marketing area.

Proponents of Proposal No. 1 indicated that they had included these counties in their proposal because they had been in the previously regulated Nashville marketing area.

There are no plants in these counties, except the Glasgow Cheese Plant, which, according to the record, is not capable of supplying the market because it does not have a Grade A receiving facility.

These counties are surrounded on three sides by the Louisville-Lexington-Evansville order. There are no distributing plants in these counties, and there are no significant population centers, other than Bowling Green (population: 42,017) and Fort Campbell. According to the witness for Fleming Dairy in Nashville, there are no significant sales in these counties from Nashville distributing plants.

In view of their northernmost location and their proximity to the Order 46 marketing area, the Fort Campbell Military Reservation and the six Kentucky counties that were part of the Nashville marketing area should not be included in the Southeast marketing area, but instead should be left unregulated at this time. There are no plants that would be unregulated by their exclusion from the marketing area.

*The Georgia county of Rabun.* This county, in the extreme northeast portion of the State of Georgia within the Chattahoochee National Forest, is surrounded on the west and south by the Georgia marketing area and on the east and north by the Carolina marketing area. There are no milk plants located within the county and no change in the regulatory status of any plant would occur as a result of its inclusion in the Southeast marketing area. It should be included in the marketing area for administrative convenience.

*The Tennessee counties of Van Buren, Bledsoe, Grundy, Franklin, Lincoln, and Moore.* These previously unregulated counties are located between the Tennessee Valley marketing area on the east, the terminated Nashville marketing area on the west, and the Alabama-West Florida marketing area on the south. This is a sparsely populated area from which milk is produced for the Nashville and Alabama-West Florida markets. There are no milk plants in these counties and no currently-unregulated plants outside of these counties would be regulated by the inclusion of these counties in the marketing area. This area should also be included in the proposed marketing area.

*The Tennessee counties of Henry, Carroll, Benton, Decatur, Henderson, Chester, and McNairy.* These seven counties, bordered on all sides by the proposed Southeast marketing area, should also be part of the marketing area. There are no milk plants in this area, nor are there any plants that would become regulated as a result of their addition to the marketing area. Since they would be bordered on all sides by other parts of the marketing area, no useful purpose would be served in leaving them out of the marketing area.

*The unregulated Arkansas counties.* These counties, which were proposed by AMPI for inclusion in the Mid-South marketing area, should be included in the Southeast marketing area. There are no distributing plants in these counties, and no new plants will become regulated as a result of the inclusion of these counties in the marketing area.

*The unregulated Texas counties of Bowie and Cass.* The Texas counties of Bowie and Cass should not be included in the Southeast marketing area. The apparent reason for including these counties in the proposed Mid-South marketing area was for administrative convenience since these two unregulated Texas counties would have been surrounded by regulated area. This is a good reason to include these two counties, but they may, in fact, be more closely associated with the Texas market. Rather than introduce the State of Texas into the Southeast marketing area for the sake of two counties that do not include any distributing plants, the counties of Bowie and Cass should be left unregulated for possible inclusion in the Texas marketing area when the opportunity presents itself.

Similarly, since the Paducah marketing area has not been included in the Southeast marketing area, there is no point in adding one Missouri county to the marketing area for the sake of map-drawing convenience. Therefore, Dunklin County, Missouri, should not be part of the Southeast marketing area.

*2(a). Milk to be priced and pooled.*[5] It is necessary to designate what milk and which persons would be subject to the merged order. This is accomplished by providing definitions to describe the persons, plants, and milk to which the applicable provisions of the order relate.

The definitions included in the order serve to identify the specific types of milk and milk products to be subject to regulation and the persons and facilities involved with the handling of such milk and milk products. Definitions relating to handling and facilities are ''route disposition,'' ''plant,'' ''distributing plant,'' ''supply plant,'' ''pool plant,'' and ''nonpool plant.'' Definitions of persons include ''handler,'' ''producer-handler,'' ''producer,'' and ''cooperative association.'' Definitions relating to milk and milk products include ''producer milk,'' ''other source milk,'' ''fluid milk product,'' ''fluid cream product,'' and ''filled milk.''

Several of these definitions were of particular issue at the hearing: i.e., ''route disposition,'' ''pool plant,'' ''producer-handler,'' and ''producer.'' All of the remaining definitions are patterned after those contained in one or more of the orders involved in this proceeding. Official notice of the final decisions setting forth the need and basis of such provisions was taken at the hearing. A discussion of those definitions that were of particular issue at the hearing, as well as those that involve substantive modifications, is set forth below.

*Route disposition: § 1007.3.* The route disposition definition sets forth the type of deliveries that are considered in determining whether a distributing plant qualifies for pooling under the order.

As proposed in Proposal No. 1, route disposition means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk. This definition should be modified slightly to include, for the limited purpose of determining pool plant qualification, packaged fluid milk products that are transferred from a plant with route disposition in the marketing area to a

[5] The findings and conclusions in this section are identical to those of the recommended decision, except for ''lock-in provision,'' ''unit pooling,'' ''supply plants,'' ''producer-handler,'' ''producer,'' and ''producer milk.''

distributing plant if such transfers are classified as Class I milk.

This language, which is also included in the Eastern Colorado Federal milk order (See § 1137.3) is necessary to preclude a plant from becoming partially regulated because it ships significant quantities of packaged fluid milk products to another distributing plant, which then distributes those fluid milk products to retail and wholesale outlets. This precise situation has occurred in the neighboring Southwest Plains order, where a previously fully regulated plant failed to qualify as a pool plant because it shipped more than 50 percent of its packaged fluid milk products to a distributing plant which it operated in another city.[6] As a partially regulated plant with a Class I utilization higher than the market average, the handler was in a position to pay its producers a price in excess of the order's blend price. In addition, during one month AMPI was required to depool milk that it had diverted from the plant in order to insure that the plant qualified as a pool plant. This resulted in financial loss to the cooperative.

To prevent this situation from occurring in the Southeast marketing area, the route disposition definition should include, for the limited purpose of determining pool plant qualification, packaged fluid milk products that are transferred from a plant with route disposition in the marketing area to a distributing plant if such transfers are classified as Class I milk.

As a general application of the order, packaged fluid milk products that are transferred from one handler to another will be treated as an interhandler transfer. Thus, each transaction should be properly identified and specifically reported as such to the market administrator. This will facilitate orderly operations and eliminate ambiguous or dual reports.

The modified route disposition definition adopted herein will not change this treatment. It merely provides that such transfers, which are classified as Class I and emanate from a plant with route disposition in the marketing area, shall be considered as route disposition from the transferor plant, rather than the transferee plant, for the single purpose of qualifying the transferor plant as a pool distributing plant under § 1007.7(a).

*Plant: § 1007.4.* A plant definition should be included in the merged order to remove any uncertainty with respect to what constitutes a plant and what constitutes a reload point.

The cooperative coalition's proposed plant definition is identical to the definition now found in Order 93. Order 96 contains a slightly different plant definition, while Orders 7, 94, and 108 do not define this term.

The cooperatives' proposed definition should be adopted for the merged order. The proposal defines plant as the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks and used only as reload points for transferring bulk milk from one tank truck to another or separate facilities used only as distribution points for storing packaged fluid milk products in transit for route disposition would not be plants under this definition.

There was no opposition to this proposal at the hearing or in the briefs that were filed. This definition is widely used in other Federal orders and is familiar to the industry. It should be included in the merged order.

*Pool plants: § 1007.7.* Essential to the operation of a marketwide pool is the establishment of minimum performance standards to distinguish between those plants substantially engaged in serving the fluid needs of the regulated market and those plants that do not serve the market in a way or to a degree that warrants their sharing in the Class I utilization of the market. The pooling standards that are contained in the attached order would carry out this concept under present marketing conditions.

*Distributing plants: § 1007.7(a).* To be pooled under the merged order, a distributing plant's total route disposition each month must be equal to 50 percent or more of the fluid milk products physically received at the plant or diverted from the plant during the month. In addition, the plant's daily average route disposition in the marketing area must be equal to at least 1,500 pounds per day or 10 percent of the plant's receipts of fluid milk products, except filled milk, physically received at the plant or diverted from it during the month.

Citing an expected Class I utilization under the merged order that is likely to exceed 68 percent during all months of the year, the cooperative coalition proposed a total route disposition requirement of 50 percent each month of the year and an in-area route disposition requirement of 10 percent. These requirements are similar to those of the five existing markets, except for the Georgia market, which has a 15 percent in-area requirement. These standards are reasonable and should be adopted for the merged order.

*Lock-in provision: § 1007.7(d).* With a 10 percent in-area route disposition requirement, it is possible that a distributing plant may meet the pooling standards of more than one order. A question then arises concerning under which order the plant should be regulated. Under Proposal No. 1, a distributing plant that met the order's pooling standards would be regulated under the Southeast order if the plant is located in the Southeast marketing area. This is a sensible provision to have in this area and should be adopted.

Testifying in support of the lock-in provision, the spokesman for the cooperative coalition stated that this provision differs slightly from the traditional Federal order method of determining where a distributing plant should be regulated when the plant qualifies for pooling under more than one order. He explained that the traditional method provides that a plant should be pooled under the order in which it has the most sales. The principle behind that rule, he added, was to insure that all handlers having sales in an order area were subject to the same price and other regulatory provisions as their competition.

The coalition's witness stated that with the advent of processing plants with sales distribution over wide geographic areas, the traditional method of pooling distributing plants is outdated. He said that another, and equally important, reason for adopting a lock-in provision is to minimize any inequities which may occur between producers located within the same geographic supply area. These inequities are created when a distributing plant is located within one marketing area and obtains its milk supply within that marketing area, but is regulated by another Federal order.

The witness referred to an exhibit which compared blend prices under the Greater Louisiana and the adjacent Texas orders. He noted that the Greater Louisiana order blend prices, f.o.b. Lake Charles and Shreveport, Louisiana, have been substantially above the Texas order prices at similar locations. He said that the 73 to 77 cents per hundredweight average difference in blend prices between the two orders, considering the overlap of supply for both plants, would create unstable and disruptive marketing conditions in the proposed merged order supply area and that these differences in producer pay prices would create difficulties in maintaining

[6] Official notice is taken of the suspension of certain provisions of the Southwest Plains order effective February 1, 1994 (59 FR 11180).

sales and attracting adequate supplies of milk for handlers under the merged order.

In its brief, Southern Foods Group urged the Secretary to reject any lock-in provisions, arguing that it was philosophically opposed to a lock-in provision unless the provision is designed to avoid switching the regulation of a plant from one market to another on a frequent basis. It stated that ''in general, a plant should be regulated where it has a plurality of its milk distribution since that is where it is competing the most against other regulated handlers.'' The brief also stated that the problem experienced by Guth Dairy, Lake Charles, Louisiana, is irrelevant because that plant has gone out of business. Finally, focusing on Gold Star Dairy in Little Rock, SFG argued that if that plant has greater sales in the Texas marketing area than in the Southeast marketing area it should be regulated under the Texas order.

The question of where to regulate a plant that meets the standards of more than one order may actually depend upon the circumstances involved. While SFG holds that the plant should be regulated in the market in which it mostly competes for sales, problems that have surfaced in the past year in the Greater Louisiana, Tennessee Valley, and Louisville-Lexington-Evansville orders would indicate that a handler's procurement area may be more important than its distribution area in determining where the plant should be regulated.

Given proper Class I price alignment between two orders (i.e., the same Class I price at a given location regardless of which order a plant is regulated under), a plant which meets the pooling standards of more than one order will be in a better position to procure a milk supply by being regulated in the marketing area in which it is located unless it is shipping milk into a market which is generating a higher blend price at the plant's location. Even with the higher blend price under the other order, however, it may still not be appropriate to regulate the plant under the higher-priced market if, in doing so, it causes disorderly marketing conditions in the market where the plant is located.

With the exception of the Upper Florida market, the Southeast marketing area is surrounded by markets with equal or lower prices. In addition, it is expected that the Class I utilization of the Southeast market will exceed the utilization of these surrounding markets with the exception of the Upper Florida market. Consequently, the blend price at any location within the Southeast marketing area is likely to be higher than the blend price at that location under any of the surrounding orders.

As indicated, the sole exception to this statement is in southern Georgia or southern Alabama, where there are no plants at the present time that would qualify for pool status in the Upper Florida market. In view of this, the lock-in provision proposed for the Southeast market is a prudent measure that will avoid the disorderly marketing conditions that result when a plant becomes regulated in a lower blend price market or switches back and forth between two orders.

Under the proposed Southeast order, a plant that qualifies as a pool distributing plant and which is located within the marketing area will be regulated under this order even if it has greater sales in another order's marketing area. The adjacent Texas, Southwest Plains, Paducah, Louisville-Lexington-Evansville, and Upper Florida orders contain provisions (§§ 1126.7(f)(4), 1106.7(f)(2), 1099.7(c)(3), 1046.7(e)(3), and 1006.7(d)(3), respectively) that will conform to this provision by yielding regulation of the plant to the Southeast order. However, §§ 1005.7(d)(3) and 1011.7(d)(3) of the Carolina and Tennessee Valley orders, respectively, do not contain this type of provision, setting up a potential conflict with § 1007.7(d), which will only release a plant that has more sales in another marketing area if the plant is not located in the Southeast marketing area.

At the present time, there is no distributing plant in the Southeast marketing area that has, or is likely to have, more sales in the Carolina or Tennessee Valley marketing areas than in the Southeast marketing area. Should this situation change, however, and a plant located in the Southeast marketing area does develop more route disposition under Order 5 or 11 than under Order 7, the plant should remain regulated under Order 7 notwithstanding the provisions of Orders 5 and 11.

The Southeast order should also contain a provision releasing a plant from regulation if the other order contains a provision that requires regulation of the plant because of its location within that order's marketing area. For example, the Louisville-Lexington-Evansville order, in § 1046.7(e)(2)(ii), requires regulation of a distributing plant if the plant meets the pooling standards of § 1046.7(a), is located in the marketing area, and is subject to a Class I price under Order 46 that is not less than the Class I price under another order in which it also qualifies as a pool plant and in which marketing area it has more route disposition. Accordingly, a paragraph is included in the proposed Southeast order, § 1007.7(e)(4), which recognizes the jurisdiction of Order 46 to regulate such a plant.

A new paragraph—§ 1007.7(d)—has been added to the pool plant rules in this final decision to clarify the application of the lock-in provision. Although the order language would clearly regulate such a plant by not releasing it to another order in either § 1007.7(g) (3) or (4), the inclusion of the new paragraph (d) leaves no doubt about the matter.

*Multiple order pooling.* At the hearing, Gold Star suggested another way of handling a plant with sales in more than one market. It suggested prorating the plant's sales among the markets in which it qualifies for pooling and in which it has at least 25 percent of its sales. Producers supplying the plant would receive a weighted average price based upon the blend prices of the various markets in which the plant so qualifies.

This proposal should not be adopted. It would result in paying producers different prices in a common supply area—one of the problems cited for merging these orders—and it would be cumbersome to administer. With this merger and perhaps others to follow, the regulatory problems experienced with large plants distributing over wide areas should be significantly diminished.

*Unit pooling: § 1007.7(e).* Barber Pure Milk Company (Barber) and Dairy Fresh Corporation (Dairy Fresh) proposed the ''unit pooling'' of a distributing plant and one or more other plants. Under their proposal, a unit consisting of one distributing plant and one or more additional plants of a handler at which Class I and/or Class II products only are processed and packaged would be considered as one plant for the purpose of meeting the pool distributing plant requirements if all of the plants in the unit were located within the marketing area, and if, prior to the first of the month, the handler operating such plants filed a written request for unit pooling with the market administrator. The proposal would permit only one unit per handler, require that all plants in a unit be located in the marketing area, and exclude plants producing frozen desserts from being part of a unit.

Barber's spokesman testified that Barber Pure Milk Company operates two non-pool plants that process and package Class II products, one located in Montgomery, Alabama, and the other located in Oxford, Alabama. The Montgomery plant processes dessert and

ice cream mix and buttermilk for baking and currently receives about 700,000 pounds of milk from producers per month. The Oxford plant processes and packages cottage cheese, sour cream, and sour cream dip and receives about 400,000 pounds of milk from producers each month.

The witness stated that, up until early 1992, Barber operated four plants on the Alabama-West Florida order, located at Birmingham, Mobile, Montgomery, and Oxford, Alabama, which is 60 miles east of Birmingham. Each of the four plants engaged in the manufacture of Class II products in varying degrees. He said that, for efficiency purposes, the Class I processing and packaging at the Montgomery and Oxford plants was moved to the Birmingham and Mobile plants, while the Class II processing and packaging at the Birmingham and Mobile plants was moved to the Montgomery and Oxford plants.

The Barber witness stated that to accommodate this economical specialization of plant operations and not create any chaos in the marketplace, it was necessary to make some changes in the order. If the unit pooling proposal is not adopted, he said, it will become necessary to incur unnecessary costs of moving milk to pool distributing plants, unloading the milk, reloading the milk, and transporting it back to the Class II specialty plants. He noted that the diversion provisions will accommodate the movement of some of the needed milk directly from the farm to the Class II plants, but not all of the milk required.

The Barber witness testified that the milk supply for the Oxford plant comes from six producers located in the Alabama counties of Calhoun, Etowah, and Talladega who produce approximately 500,000 pounds of milk per month or about 80 percent of the plant's requirements. He said that without the unit pooling provision, about two-thirds of this milk could be diverted to the Oxford plant, but the remaining third would have to be delivered to the Birmingham pool plant, unloaded at the plant, reloaded, and hauled the 60 miles back to Oxford. The additional cost involved in this, he estimated, was approximately 47 cents per hundredweight or $225 per load.

This witness also testified that milk to supply the Montgomery plant of approximately 700,000 pounds per month is located in northern Alabama and Tennessee and must be transported through the city of Birmingham on its way to Montgomery. There is no additional hauling cost if the milk is received at Birmingham; however, the cost of receiving the milk, washing the truck, and reloading the milk adds an additional .20 cents per hundredweight to the cost of the milk at Montgomery or an additional $95 for each load of milk received at Birmingham and then transferred to Montgomery.

The witness stated that unit pooling should not be rejected because of concerns about attracting additional supplies of milk to the market for Class II products. He said that the production of Class II products was demand driven and that no additional quantity beyond the demand would be produced by the specialized plants. Nevertheless, to allay any concerns that these plants would be used for surplus disposal, he said the proposal restricts unit pooling to plants which produce Class I and II products only, excluding ice cream.

In its proposal concerning the proposed Mid-South marketing area, AMPI also proposed the unit pooling of plants that are located within the marketing area. Unlike the Barber/Dairy Fresh proposal, the AMPI proposal did not exclude plants making ice cream from the unit.

In its post-hearing brief, the Fleming Companies urged that unit pooling be rejected. It stated that pool performance standards should be fixed so that each producer, each plant, and each supply organization demonstrate a close association with the Class I requirements of the market.

The unit pooling proposals make economic sense and should be adopted for the merged marketing area, but with certain restrictions.

The order's pooling standards insure that each distributing plant and each unit of plants consisting of at least one distributing plant perform at the same minimum level to be eligible for pool plant status. The total route disposition requirement—50 percent each month of the year—recognizes that not all of the plant's receipts will be needed for Class I use. That standard permits up to 50 percent of the plant's receipts to be used in Class II, III, or III-A products.

If Handler A chooses to operate one large distributing plant in which 40 percent of the plant's receipts are used in Class II products, while Handler B chooses to operate a distributing plant exclusively for fluid use and another plant exclusively for Class II products and the Class I utilization of both plants added together is 60 percent, it makes no sense to preclude Handler B from separating the operations. Both handlers are performing at precisely the same levels; they simply differ in their modes of operation. They should be permitted to operate in whatever manner they deem most efficient.

As proposed by Barber and Dairy Fresh, a unit should be restricted to plants located in the marketing area that make only Class I or Class II products. If a handler wishes to add or remove plants from the unit, the handler would have to file a request with the market administrator before the first day of the month in which the change is to be effective.

The provision adopted here deviates from the Barber/Dairy Fresh proposal by permitting plants that make frozen desserts to be included in a unit. No convincing rationale was given for excluding ice cream or other frozen dessert plants from a unit. This restriction would be unfair to a handler who makes ice cream in a separate plant, as compared to another handler who bottles milk and makes ice cream in the same plant. It also would require a set of standards to determine what is a frozen dessert plant and what is not. For example, if 50 percent of a manufacturing plant's milk was used to make cottage cheese and 50 percent was used to make ice cream, one would have to determine whether this plant was a cottage cheese plant or a frozen dessert plant. There is no basis for distinguishing frozen desserts from other Class II products for the purpose of unit pooling. Accordingly, this part of the Barber/Dairy Fresh proposal is not adopted.

One additional restriction should be added to the proposal, however. It would be inappropriate to permit a Class II operation in a higher-priced zone to unit pool with a distributing plant in a lower-priced zone. An example will illustrate the point.

If a handler with a plant in Montgomery, Alabama, processed 6 million pounds into Class I products and 4 million pounds into Class II products, it would pay into the pool—based on prices proposed in this decision—a Class I location adjustment of $12,000 (i.e., 6 million pounds x $.20 per cwt.), but in paying producers supplying the plant, the handler would draw out of the pool a location adjustment value of $20,000 (i.e., 10 million pounds x $.20 per cwt.). In effect, the handler would take out of the pool in location value $8,000 more than it contributed.

It is universally true that a handler in a higher-priced zone will draw out of the pool more location value in the blend price to its producers than it contributes on the basis of its location adjustment for Class I milk. This is because the pooling standards do not require a handler to use all its milk in Class I. Because the market for Class II products is more of a regional market,

location value has not been added to Class II products. The pool, in effect, absorbs a certain amount of transportation cost to provide a handler with milk for Class II use. When both the Class I and II products are processed at the same plant, this subsidization is limited by the amount of milk that may be used in Class II at that location.

Under the unit pooling proposal of Barber and Dairy Fresh, it would be possible to unit pool a Class I distributing plant in a lower-priced zone (e.g., Montgomery, Alabama) with a Class II operation in a higher-priced zone (e.g., Franklinton, Louisiana). Assuming that in this unit, the Montgomery plant processed 6 million pounds of Class I milk, while the Franklinton plant processed 4 million pounds of Class II milk, the handler would contribute $12,000 to the pool in location value on Class I milk, but it would draw out of the pool $32,000 (i.e., 6 million pounds x $.20 in Montgomery plus 4 million pounds x $.50 cents in Franklinton). In other words, it would take out of the pool $20,000 more than it contributed in location value.

It would not be fair to expect all of the market's producers to subsidize the delivery of milk for Class II use in the Montgomery/Franklinton unit example described above. As previously noted, a certain amount of subsidization will always occur to the extent that Class I route disposition requirements are less than 100 percent and no location value is attached to the Class II price. However, the opportunity to take advantage of this situation is equally available to all of the market's handlers. On the other hand, under the Barber/Dairy Fresh unit pooling proposal large handlers with multiple plants would be able to take a disproportionate share of location value out of the pool if their Class II operation were located in a higher-priced zone than their Class I operation.

To correct this inequity, the composition of units should be further restricted. Specifically, in a unit consisting of two or more plants, any plant that, by itself, would not qualify as a pool plant must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the unit distributing plant that would, by itself, qualify as a pool plant. Thus, for example, a Class II operation in Nashville may unit pool with a Class I operation in Atlanta, but a Class II operation in Atlanta may not unit pool with a Class I operation in Nashville.

This additional restriction on unit pooling will insure a degree of fairness to all of the market's handlers in processing Class II products and to all of the market's producers in the distribution of pool funds. It also will tend to encourage milk in lower-priced areas to be used in lower-valued products while encouraging milk to move to the market's higher-priced areas for use in Class I.

In their exceptions, Barber Pure Milk Company (Birmingham, Alabama) and Dairy Fresh Corporation (Greensboro, Alabama) objected to the additional unit pooling restriction. They contend that any handler can accomplish the same result—i.e., pool milk at a higher-priced location—by diverting milk to a Class II plant located in the higher-priced zone. They argue that it is more efficient to permit unit pooling for Class II plants located in higher-priced zones than the pricing zone of the qualifying distributing plant and urge that the restriction be removed.

First of all, it is not possible to accomplish the exact same result by diverting milk to a Class II plant in a higher-priced zone. The Barber witness testified that some milk could be pooled in this manner, but not all of the milk that might be required. Before a handler can divert milk, the milk to be diverted must become eligible for diversion. This is accomplished by delivering the milk to a pool plant for a minimum number of days. Under the Southeast order, at least 10 days' production (4 days' production during January through June) must be received at a pool plant during the months of July through December.

Because of this requirement, there is a practical limit on where milk will be diverted in relation to the pool plant from which diverted. For example, it is unlikely that a handler in Nashville will divert milk to a nonpool plant in Hattiesburg. With unit pooling, however, milk going to a Class II operation may have no association with a Class I operation that is hundreds of miles away.

There is no indication of how the removal of this restriction would promote greater efficiencies. However, the decision clearly sets forth the reasons for the restriction: to promote a degree of fairness to all market handlers, whether their Class I and Class II uses are in the same or separate facilities, and to the market's producers in the distribution of pool funds.

*Supply plants: § 1007.7(b).* A supply plant should be defined as a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant. This is the definition now included in Orders 93 and 108 and proposed by the cooperative coalition for the merged order.

To qualify as a pool plant, a supply plant should be required to transfer a certain portion of its receipts each month to a pool distributing plant. In that way, it will be contributing to the fluid needs of the market.

As proposed by the cooperative coalition, a supply plant would have to transfer 60 percent of its receipts to pool distributing plants during each of the months of July through November and 40 percent during each of the months of December through June. The supply plant's ''receipts'' would include milk that is diverted from the plant as ''producer milk,'' but would exclude milk that is diverted to the supply plant from another pool plant. In addition, receipts would include not only the milk received from individual dairy farmers, but also the milk received from a cooperative association acting as a handler on milk delivered directly from producer-members' farms (i.e., pursuant to § 1007.9(c) of the order).

At the hearing, a spokesman for Kraft Foods testified that a pool supply plant should be allowed to use the most efficient form of milk movement to meet supply plant shipping requirements. He said that in addition to including transfers from the plant, diversions to pool distributing plants directly from producers' farms also should be counted in meeting those pooling requirements. In its Proposal No. 9, the Fleming Companies also proposed that diversions be used to meet a supply plant's shipping requirement.

The record indicates that distributing plants in the Southeast marketing area are supplied with milk that comes directly from producers' farms. Pool supply plants, as defined in Section 7(b) of the individual orders, have not been a factor in this area for many years. To the extent that any plant milk is transferred to distributing plants, such milk generally comes from cooperative association ''balancing plants,'' which qualify as pool plants based on the cooperatives' total deliveries of milk to pool distributing plants, as opposed to individual plant performance. Such deliveries may include transfers of plant milk but, as a general rule, the milk comes directly from producers' farms without being first delivered to the cooperative's plant.

Despite the fact that this market may have little need for true supply plants, the merged order should continue to accommodate the possible pooling of such plants in case plant milk from a distant location is needed to

supplement locally-produced milk. However, there is no reason to facilitate the pooling of manufacturing plants as ''pool supply plants'' by allowing such plants to qualify on the basis of direct deliveries from the farm when the very fact that such deliveries can be economically made belies the need for the ''supply plant'' in the first place. For this reason, the Kraft and Fleming proposals to permit diversions to be used as qualifying shipments for a supply plant should not be adopted.

*Balancing plants: § 1007.7(c).* While the term ''balancing plant'' is not actually used in the order, as described in § 1007.7(c) of the proposed Southeast order it means a plant located in the marketing area and operated by a cooperative association which delivers 60 percent of the producer milk of its members to pool distributing plants during each of the months of July through November and 40 percent during each of the months of December through June. The deliveries to pool distributing plants may include deliveries directly from the farms of producer members of the association as well as transfers from the cooperative's plant.

To be eligible for pool status, the plant must not qualify as a pool distributing plant or a pool supply plant under the Southeast order or any other Federal order. Also, the plant must be approved to handle Grade A milk by a duly constituted regulatory agency.

This provision is essentially the same as the proposal of the cooperative coalition, except that it requires a plant that qualifies under this paragraph to be located within the Southeast marketing area. The plants that are likely to become cooperative balancing plants under the Southeast order are DI's plants in Franklinton, Louisiana, and Lewisburg, Tennessee, and Mid-America Dairymen's plant in Kentwood, Louisiana. Therefore, the in-area location requirement should not affect the regulatory status of any plant that is expected to be pooled as a balancing plant under this order.

Unlike a supply plant, which must incur the cost of shipping milk to the market, a balancing plant could be located in New Mexico, Arizona, or some other distant location and not incur the cost of shipping milk from those locations to the market. Such a plant could qualify based on the direct deliveries of locally-produced milk. For this reason, it would be imprudent not to require a balancing plant to have some association with the Southeast marketing area, as urged by the Fleming Companies, Barber, and Dairy Fresh in their briefs.

In its joint brief, Barber and Dairy Fresh urged the Secretary to not only require a balancing plant to be located in the marketing area, but also to require the plant to transfer 10 percent of the plant's receipts to pool distributing plants each month. The Fleming Companies made a similar plea in its brief.

These handlers provided no convincing reason why any shipments from a balancing plant that is located within the marketing area are needed. Such plants, in fact, provide a service to the market in balancing its reserve supplies. The performance standards applicable to the cooperatives which operate these plants assure that milk will be made available to meet the Class I needs of the market. Therefore, in the absence of a compelling reason for adopting these seemingly unnecessary milk handling and transportation requirements, the request for specific performance from such a plant is denied.

The Fleming Companies, Kraft General Foods, and Southern Foods Group urged that consideration be given to establishing pooling provisions for proprietary handlers that are the same as those for cooperatives. They contend that the cooperatives are able to attach milk supplies to the market which are devoted exclusively for manufacturing use, but that proprietary manufacturing plants and fluid milk handlers are prohibited from doing the same thing. Specifically, they stated that cooperative association ''balancing'' plants are allowed to pool based on the organizational performance of the cooperative, an option that obviously is not available to proprietary handlers. Instead, proprietary handlers would have to rely on supply plants that are required to receive, unload, reload, and transfer producer milk to distributing plants in order to qualify as pool supply plants. The issue, they argue, is not one of ''need'' for supply plant milk to supply the fluid market, but whether the order should permit the dominant cooperative to service the market efficiently while requiring non-cooperative sources of milk to be encumbered with great inefficiency.

It is questionable how the ability of proprietary handlers to attach additional supplies of milk for manufacturing use with the market promotes inefficiencies in supplying the fluid milk needs of the market. The primary objective of pooling provisions is to provide the incentive to supply the fluid milk needs of the market and to accommodate the pooling of the reserve supplies of milk that are available and are necessary to serve or balance the fluid milk needs.

To the extent that supply plants are necessary, the pooling standards are the same for cooperatives and proprietary handlers. The shipping standards are set at a level to ensure a sufficient association with the fluid market to warrant a share in the Class I use of the market.

Cooperative association ''balancing plants'' serve a different role. These plants are the outlets of last resort. When surplus milk has no other place to go on weekends or during the spring and summer months, it is manufactured into storable products at Mid-Am's manufacturing plants in Franklinton and Kentwood, Louisiana, and Lewisburg, Tennessee. When production decreases, these plants may shut down completely or operate at minimal capacity. There has to be some place for surplus milk to go and dairy farmers, through their cooperative associations, have assumed the burden of processing this surplus milk. At the same time, the overall pooling standards ensure that milk is supplied for fluid use, which is a primary objective of the cooperative associations supplying the market.

A proprietary cheese plant operates on a different premise. The primary objective of a proprietary cheese plant operator is to produce as much cheese as possible as efficiently as possible. Ideally, such plants prefer to operate at full operating capacity all the time. To give up any more milk than is absolutely necessary is to forgo profits.

There is no basis for incorporating order provisions in this market that would encourage additional cheese production by making it easier to pool cheese plants. In an area such as the Southeast marketing area that has a high Class I price to assure an adequate supply of milk for fluid use, the adoption of provisions to facilitate the proliferation of cheese plants is unwarranted. There is no shortage of milk for cheese in the United States, and there is no reason to encourage additional milk production for cheese plants in the Southeast. Fluid milk processors in the Southeast pay relatively high Class I prices to assure an adequate supply of milk for fluid use, and the blend prices resulting from those Class I prices should not be reduced by encouraging additional production destined for Class III use.

*Revisions of pooling standards: § 1007.7(f).* Kraft Foods proposed that the market administrator be given the authority to adjust pool supply plant shipping standards. The Kraft witness stated that this will afford the Department more flexibility in meeting the changing needs of the market. The

witness cited the lengthy delays that are now frequently incurred in suspending regulations when market conditions change. He also noted that while some orders permit the Director of the Dairy Division to issue revisions of shipping standards, this process is also a lengthy procedure.

The Kraft proposal should be adopted, but it should be modified to include the distributing plant route disposition standards in § 1007.7(a), the supply plant shipping standards in § 1007.7(b), the cooperative ''balancing plant'' performance standards in § 1007.7(c), the ''touch base'' standards in § 1007.13(d) (1) and (2), and the diversion limitations in § 1007.13(d) (3) and (4). The authority to increase or decrease a percentage performance level should be restricted to not more than 10 percentage points above or below the levels established in the order. The authority to increase or decrease the producer ''touch base'' standards in § 1007.13(d) (1) and (2) should be restricted to 50 percent of the standard specified in the order.

Most milk order actions involve temporary adjustments to pooling standards to recognize changes in supply and demand conditions. These adjustments are accomplished in most orders by ''suspending'' certain language from a provision of the order so as to reduce the regulatory burden on handlers and assure the continued pooling of milk that has been historically associated with a market without the need for making costly and inefficient movements of milk. A large percentage of these suspensions could be avoided by permitting the order's pooling standards to be adjusted slightly at the direction of the market administrator, who is the person delegated by the Secretary to administer the order.

Suspension actions only provide a means for reducing pooling standards. These actions cannot be used to increase pooling standards in the event that additional supplies of milk are needed. A few orders provide authorization for the Director of the Dairy Division to either increase or decrease pooling standards as a result of changes in supply and demand conditions. This authority is intended to provide a greater degree of flexibility to adjust performance standards to the varying needs of the market. However, the process for implementing the changes has made it extremely difficult to respond as expeditiously as is necessary to reflect frequent and rapid changes in marketing conditions.

As proposed herein, the authority to modify pooling standards and diversion limitations would be restricted to not more than 10 percentage points up or down. Following a written request to make such an adjustment, the market administrator will notify all parties in the market who would have an interest in the request. This would include, at a minimum, every handler and every cooperative association representing producers in the market. In addition, the market administrator will notify the Director of the Dairy Division, Agricultural Marketing Service, of the request. The market administrator will provide at least seven days for the submission of written comments, which may be faxed or mailed, before making a decision concerning the request. Prior to making such a decision, the market administrator will confer with the Director of the Dairy Division.

The flexibility accorded in the order by this provision should be helpful in meeting any fluctuating needs of the market in a timely manner.

*Nonpool plant: § 1007.8.* The nonpool plant definition proposed for the merged order should be adopted. The plants defined as nonpool plants include other order plants, plants of producer-handlers, partially regulated distributing plants, unregulated supply plants, and exempt plants. With the exception of the exempt plant definition, these terms are standard among the separate markets involved in this proceeding.

The exempt plant definition proposed by the cooperative coalition includes, in addition to a plant operated by a governmental agency, a plant with monthly route disposition of less than 100,000 pounds.

At the hearing, the cooperative coalition spokesman indicated that if the two small producer-handlers now in the Georgia market—Etowah Maid Dairies, Inc., at Canton, Georgia, and Sheppard Brothers Dairy Farm at Stone Mountain, Georgia—were not exempt from regulation under the producer-handler provisions proposed for the merged order, they would be under the proposed exempt plant definition. Although neither producer-handler testified at the hearing or filed a post-hearing brief, it is not certain that they would, in fact, be exempt from regulation under the proposed exempt plant definition.

According to the cooperatives' witness, the purpose of the 100,000-pound exemption ''is to exempt from pricing and pooling those producer-handlers who are fairly small in size, whether or not they might otherwise qualify as a producer-handler.'' As written and as explained at the hearing, however, this provision would apply to any plant with monthly route disposition under 100,000 pounds, whether or not the handler otherwise meets the criteria for being a producer-handler.

The proposed exemption from regulation based on monthly route disposition should be adopted. As a practical matter, the exemption of plants of this size would pose no threat to the order's regulated handlers. In addition, the regulatory burden on a handler of this size is much greater than it is on an average size handler. Although it is not certain that the two producer-handlers in this market would be exempt under this provision, it should nevertheless be included in the order to preclude the regulation of any small handler who may distribute fluid milk products in the Southeast marketing area.

*Handler: § 1007.9.* The impact of regulation under a Federal order is primarily on handlers. A handler definition is therefore necessary to identify those persons from whom the market administrator must receive reports, or who have a financial responsibility for payment for milk in accordance with its classified use value. This will assure that all information necessary to determine a person's status under the order can be readily determined by the market administrator.

As proposed by the cooperative coalition, the handler definition should include the operator of a pool plant, a cooperative association that diverts milk to nonpool plants or delivers milk to pool plants for its account, a producer-handler, and any person who operates a partially regulated distributing plant, an-other order plant, an unregulated supply plant, or an exempt plant.

With the exception of the operator of an exempt plant, these terms are standard definitions, which are included in virtually all Federal milk orders. The inclusion of the operator of an exempt plant in the handler definition is somewhat unusual. Although most of the individual orders, except Order 108, exempt government plants from regulation, none of them include the exemption for a plant based on minimum route disposition. Because of this additional basis for exemption, the operator of an exempt plant should be included in the handler definition. Although the operator of an exempt plant is, as the name implies, exempt from full regulation under the order, the plant operator must still file reports with the market administrator so that the basis for exemption can be determined and milk handled by the plant can be properly classified. For this reason, it is logical to include an exempt plant operator in the handler definition.

*Producer-handler: § 1007.10.* The merged order should exempt a producer-handler from regulation if the producer-handler meets certain specified requirements. The only two producer-handlers now operating in the proposed marketing area have been subject to the provisions of the Georgia order. Since this provision is short, simple, easily understood and virtually identical to the producer-handler provisions contained in the separate orders, it should be adopted for the merged order.

The cooperative coalition's proposed producer-handler provision defines a producer-handler as a person who is engaged in the production of milk and also operates a plant from which during the month fluid milk products are disposed of directly to consumers through home delivery retail routes or through a retail store located on the same property as the plant. A person meeting all of the other requirements for a producer-handler, but who disposes of fluid milk products through wholesale outlets, jobbers, independent route distributors, or retail outlets other than a plant store would not qualify as a producer-handler.

As described by the cooperatives' spokesman, the retail-wholesale distinction is designed to address the point at which the pricing advantage granted to producer-handlers contributes to disorderly marketing. The witness testified that a producer of medium farm size who bottles his or her own product and sells to his/her neighbors is not a serious threat to orderly marketing. While such a person still has the same buying advantage, such savings are less than the additional cost inherent with small size.

The cooperatives' spokesman also stated that even a producer-handler of substantial size who develops home-delivery routes will probably not pose a serious threat to orderly marketing under current economic circumstances. He noted that where such distribution does exist, it is far less price sensitive than sales from supermarket shelves. Although the producer-handler would have a cost advantage by exemption from pricing and pooling, this advantage would be eroded through the cost associated with the manner of distribution, according to the witness.

The witness also testified that a producer-handler who distributes fluid milk products through a plant store does not pose a serious threat to orderly marketing since the consumer must come to the producer-handler's place of operation. Moreover, the product is not in the regular price-sensitive channels of distribution.

The witness said that most fluid milk product disposition now takes place through wholesale distribution to multiple store outlets. These wholesale accounts are generally high volume in nature and highly sensitive to price differentials, he added, and those handlers who engage in trade through wholesale channels should not be exempt from pricing and pooling, even if such handler deals exclusively with its own raw milk production.

The spokesman argued that the purpose of Federal orders is to insure an adequate amount of pure and wholesome milk for consumers by establishing a regulatory scheme that insures equitable treatment of all handlers and producers. Unless there is a very good reason to exempt a plant from regulation under an order, each handler should be subject to the same pricing and pooling provisions to insure the integrity of the regulatory scheme, he said.

The witness also claimed that while Congress intended to exempt small family production/distribution units from regulation under an order, it did not envision the large, multi-million pound units that now compete in the wholesale milk trade in many parts of the country. For this reason, he said, the cooperatives' proposed language was designed to insure that any single person, partnership, or corporation that establishes a production/distribution unit of this magnitude and which competes in the wholesale market would come under full regulation.

Experience in the markets involved in this proceeding indicates that effective regulation can be achieved without adopting the type of overly restrictive producer-handler provision proposed by the cooperative coalition. In particular, there is no basis for absolutely precluding a producer-handler from having wholesale customers.

As adopted in this decision, a producer-handler is any person who operates a dairy farm and a distributing plant which has route disposition of more than 100,000 pounds per month and who receives no Class I milk from sources other than his/her own farm production and pool plants. The producer-handler must provide proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled and the operation of the processing and packaging business are his/her personal enterprise and risk.

In conjunction with their proposal to revise the producer-handler definition, the cooperative coalition proposed that the administrative assessment that is applied to other handlers also apply to producer-handlers. The coalition spokesman testified that the market administrator must audit producer-handlers and may do so for no other reason than to determine that the handler is, in fact, eligible under the provisions of the order to be exempt from pricing and pooling. He said that if producer-handlers do not pay their pro-rata share of administrative expenses, the total cost would unjustly fall on the remaining handlers under the order.

Currently, under each of the separate orders, the administrative assessment is applied to handlers on their receipts of producer milk and on other receipts on which there is a pool obligation. Producer-handlers, on the other hand, who have no receipts of producer milk or any pool obligation, are not subject to an administrative assessment.

To the extent that administrative costs are incurred in administering the producer-handler provisions, fully and partially regulated handlers who bear the administrative costs associated with this activity are assured that producer-handlers continue to operate in the manner provided under the order. This insures that producer-handlers are not able to transfer the costs and risks of their operation to others and, consequently, are not able to gain an advantage relative to other producers or handlers. Despite proponents' testimony, there is no basis for the payment of administrative assessments by producer-handlers and, therefore, must deny the proposal.

Mid-Am filed an exception to the producer-handler provisions contending that there was no basis for denying its producer-handler proposal. It reiterated its arguments that effective regulation of producer-handlers cannot be achieved without the adoption of its proposal and that producer-handlers should have to pay the administrative assessment that is applied to other handlers.

Mid-Am's arguments do not provide a basis for altering the findings and conclusions on this issue. There is no indication in the record that producer-handlers are causing marketing problems in the proposed marketing area. This demonstrates that effective regulation of producer-handlers can be achieved without the unduly restrictive regulations proposed by Mid-Am. Also, there is not a sufficient basis to conclude that there is a need for producer-handlers to pay an administrative assessment.

*Producer: § 1007.12.* The term producer defines those dairy farmers who constitute the regular source of supply for the order. Under the

Southeast order, producer status should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is received at a pool plant directly from the producer's farm or is picked up at the farm by a cooperative as a bulk tank milk handler for delivery to a pool plant.

Producer status should also be accorded to a dairy farmer who has an established association with the market and whose milk is diverted from a pool plant to a nonpool plant by a cooperative association or a pool plant operator. To establish an association with the market, a dairy farmer's milk must be delivered to a pool plant each month to be eligible to be diverted to a nonpool plant as ''producer milk.'' These delivery requirements will be explained further under the discussion of producer milk.

Since producer-handlers and exempt plants are not subject to the order's pricing and pooling provisions, milk which is in excess of the needs of such operators will not be treated as producer milk when it is moved directly from the farms of such operations to a pool plant. Any such milk delivered to a pool plant would be ''other source milk.''

A dairy farmer should not be a producer under two Federal orders with respect to the same milk. The producer definition should exclude a dairy farmer with respect to milk which is received at a pool plant under the Southeast order by diversion from a pool plant under another Federal order if the dairy farmer is a producer under the other order with respect to the milk and the milk is allocated to Class II or Class III use under the Southeast order. Also, as proposed by the cooperative coalition, the producer definition would exclude a dairy farmer with respect to milk which is diverted to a pool plant under another Federal order if any portion of such person's milk is assigned to Class I milk under the other Federal order.

In its proposed producer definition, the cooperative coalition included a paragraph dealing with a ''dairy farmer for other markets.'' This provision would exclude from the producer definition during the flush production months a dairy farmer who delivered more than one-fifth of his/her milk to plants as other than producer milk during the short season. Specifically, if during the immediately preceding months of August through December more than one-fifth of the milk from the same farm was caused to be delivered to plants as other than producer milk, then no milk of such a dairy farmer would be considered to be producer milk during the following months of January through July.

The cooperative coalition's spokesman explained that this provision was designed to prevent producers of other Federal order markets from pooling their milk on the merged order during the flush spring months [perhaps because the blend price was more attractive] when such milk was not pooled on the merged order during the fall months [when the milk may have been needed]. This provision was supported by Barber Pure Milk Company, Dairy Fresh Corporation, and the Arkansas Dairy Cooperative Association. It was opposed by Southern Foods Group and Gold Star Dairy.

In its post-hearing brief, Southern Foods Group stated that it strongly opposed this provision because it would make it impossible for milk from nearby areas to be pooled on the Southeast order except in extraordinary circumstances. SFG acknowledged that it had brought Texas milk into the Greater Louisiana market to provide an independent milk supply from nearby areas. It stated that the flexibility to deliver a producer's milk to different plants during the month avoids uneconomic shipments of milk and has permitted SFG flexibility in providing milk to a deficit market.

The dairy farmer for other markets provision was also opposed by Gold Star Dairy, which characterized the provision as a ''trade barrier.'' Gold Star stated that it will interfere with the seamless movement of milk between the new order and neighboring orders and noted that it was inappropriate to penalize a producer for not delivering milk to the market when it was not needed.

The ''dairy farmer for other markets'' provision should not be adopted for the merged order. As discussed later in this decision, the proposed order contains a base-excess plan which will substantially remove the incentive for a dairy farmer who has been associated with another market during the base-building months to become a producer under the Southeast market during the base-paying months. In addition, this order has stringent pool plant performance standards and fairly tight diversion limitations. In order to be eligible for diversion during the months of July through November (December through June), 10 days' (4 days') production of a producer's milk must be received at a pool plant. This ''touch-base'' requirement will help to keep distant milk from associating with this market when the milk is not really needed at a pool distributing plant. Finally, with the flexibility accorded the market administrator in this order, the pooling standards and diversion limitations can be adjusted quickly to forestall any abuse of the order should it occur. For these reasons, there is no need to adopt the dairy farmer for other markets provision in this market.

Mid-Am filed an exception to the denial of a ''dairy farmer for other markets'' provision. Mid-Am contends that even though the proposed Southeast order contains a base-excess plan, ''this does not substantially remove the incentive for a dairy farmer who has been associated with another market during the base-forming months to become a producer under the Southeast market during other months of the year.''

The record does not support the adoption of a ''dairy farmer for other markets'' provision. As indicated, there was considerable opposition to this provision both at the hearing and in post-hearing briefs. Those opposed to the provision argued that it was a barrier that would remove a handler's flexibility to shift milk economically between plants.

The amount of milk that may be pooled under the Southeast order is dictated by the order's pooling standards and diversion limits. The market cannot be flooded with outside milk during the months of January through July because four days' production of a producer's milk must be received at a pool plant during the month, and during the months of December through June only 50 percent of the producer milk physically received at a plant may be diverted to nonpool plants.

The need for marketing flexibility outweighs the concerns of Mid-Am regarding the possibility of surplus milk pooling on the Southeast market. The ''dairy farmer for other markets'' provision should not be adopted.

*Producer Milk:*[7] *§ 1007.13.* The producer milk definition of the proposed Southeast order defines the milk that will be priced and pooled under the order. The provisions proposed by the cooperative coalition, and adopted, with some modifications, in this decision, would require that each individual producer deliver at least 4 days' production to a pool plant in each of the months of December through June and 10 days' production in each of the months of July through November. This requirement will insure that each

[7] As explained in the last two paragraphs at the end of this section, the diversion limits applicable to pool plant units which are qualified pursuant to § 1007.7(e) have been changed from those contained in the recommended decision.

producer has a direct association with a pool plant each month of the year.

Without a ''touch base'' requirement of this nature, milk of a producer could be pooled without ever having to come to a pool plant. With the provision, however, there is certainty that the milk of that producer is at least partially associated with a pool plant of the order every month.

So long as the touch-base requirement has been met during the month, all of the other milk of a producer that is not needed at a pool plant may be diverted directly from the farm to a nonpool plant if it is not needed at the pool plant. In aggregate, however, the total quantity of milk of all producers so diverted should be restricted to 50 percent during the months of December through June and 33 percent during the months of July through November.

Ten days' production is a reasonable minimum number of days for associating an individual producer's milk with this market during the short production months. Based on data in the record, the Class I utilization in this market is expected to exceed 80 percent during the months of July through November and should range from 65 to 75 percent during the months of December through June. These projections support a 10-day delivery requirement for the short production season. If at least 10 days' production of a producer's milk is not delivered to a pool plant during the summer and fall months, the milk cannot be considered to be a part of the regular source of supply for the fluid milk market and should not share fully in the Class I utilization of the marketwide pool.

In addition to performance by an individual producer, the producer milk section of the order also sets specific limits on the total amount of producer milk which may be diverted by the operator of a pool plant or a cooperative association to nonpool plants during the month. As proposed and adopted here, diversions to nonpool plants by a pool plant operator would be limited to 33 percent during the months of July through November, and 50 percent during the months of December through June, of the producer milk that is physically received at pool plants as producer milk of such handler during the month. In the case of a cooperative association, these percentages would be based on the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month.

For efficiency in the delivery of producer milk to pool plants, the proposed order provides for the diversion of producer milk from one pool plant to another pool plant. There is no limit on this type of diversion.

The proposed order also provides a procedure to be followed for determining the pool status of milk if a pool plant operator or a cooperative association diverts milk in excess of the percentage allowances specified in the order. In this case, the excess quantity of milk would not qualify as producer milk and would not be priced under the order. The diverting handler would be required to designate the dairy farmer deliveries that should not be considered producer milk. Absent such a designation, no milk diverted by the handler will be producer milk.

A parallel situation occurs when a cooperative association's diversions from a pool plant to nonpool plants would cause the pool plant to lose its pool status. In such a case, the cooperative will be responsible for identifying which dairy farmers' milk will not be producer milk. If the cooperative fails to designate the dairy farmers' deliveries that are to be excluded as producer milk, then no milk diverted by the cooperative to nonpool plants will be considered producer milk.

Milk that is diverted from a pool plant to a nonpool plant should be priced at the location of the nonpool plant where the milk is physically received. Diverted milk is presently priced under the individual orders in this manner and should continue to be so priced under the merged order.

As discussed above (with reference to pool plants), the market administrator, upon request of a handler in the market and following the submission of data, views, and arguments, should be permitted limited flexibility to adjust pooling standards and diversion limitations. With respect to diversion limitations, the market administrator should be permitted to increase or decrease diversion limitations by 10 percentage points. For example, the 33 percent limitation could be decreased to 23 percent or increased to 43 percent. In the case of the touch-base requirement, the market administrator should be permitted to increase or decrease these requirements by up to 50 percent. Accordingly, the requirement that each producer deliver 10 days' production of milk to a pool plant before being eligible for diversion to a nonpool plant may be increased to 15 days or decreased to five days. During the months of December through June, when a four day touch-base requirement applies, the touch base requirement could be increased to six days or decreased to two days. This flexibility will allow the market administrator to respond quickly to changing market conditions.

In their exceptions, Barber Pure Milk Company and Dairy Fresh Corporation (Greensboro, Alabama) reiterated the request initially made in their hearing proposal to be permitted to combine all of the milk physically received at all of their pool plants in determining their diversion limits rather than compute diversion limits based on each plant's receipts.

This modification should be adopted for handlers that unit pool their plants. Like unit pooling, unit diverting also will allow handlers to operate their plants in a more efficient manner. Rather than having to juggle milk between two pool plants to meet touch-base requirements, handlers will be able to divert milk from the plant that normally receives it. This provision, in conjunction with unit pooling, will provide handlers great flexibility in the operation of their plants.

*Other Source Milk: § 1007.14.* The other source milk definition has been a standard definition included in all milk orders since 1974, when a uniform classification plan was instituted for all milk orders. The definition included in the proposed Southeast order is identical to those included in the individual orders.

In addition to milk received from producers, a regulated pool plant may receive milk or milk products from sources other than producers. The other source milk definition identifies those other sources.

Specifically, ''other source milk'' means all skim milk and butterfat in a handler's receipts of fluid milk products or bulk fluid cream products from any source other than producers, cooperative association handlers, or pool plants. It also includes a handler's receipts of fluid cream products in packaged form from other plants. In addition, any milk products (other than fluid milk products, fluid cream products, and products produced at the plant in the same month) from any source which are reprocessed, converted into, or combined with another product in a handler's plant during the month would be considered a receipt of other source milk. Finally, receipts of milk products (other than fluid milk products or fluid cream products) for which a handler fails to establish a disposition would also be included under the other source milk definition.

Unlike packaged fluid cream products, which are Class II products and therefore not included in the fluid milk product definition, bulk fluid cream products are treated in the same manner as fluid milk products for the

purpose of applying the other source milk definition. This facilitates the application of the other provisions of the order. Accordingly, receipts of fluid cream products in packaged form from other plants are considered other source milk.

Although no handler obligation is involved with these receipts, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting technique precludes the record-keeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. Such receipts are allocated directly to the handler's Class II utilization.

Manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant also are considered as other source milk. Such products include dry curd cottage cheese received at a pool plant to which cream is added before distribution. Such receipts are allocated to a handler's Class II or III utilization, depending upon the use of the product. No handler obligation is applicable.

Products manufactured in a pool plant during the month and then reprocessed, converted into, or combined with another product in the same plant during the same month are not other source milk. Under this situation, producer milk is considered as having been used to produce the final product.

Disappearance of manufactured milk products for which the handler fails to establish a disposition is considered as other source milk. Each handler is required to account for all milk and milk products received or processed at the handler's plant. Otherwise, a handler may have an opportunity to gain a competitive advantage over competitors. Treating the unexplained disappearance of manufactured milk products as other source milk contributes to a uniform application of the provisions to all handlers.

*Fluid Milk Product/Fluid Cream Product: §§ 1007.15 and 1007.16.* The terms *fluid milk product* and *fluid cream product* are standard definitions in all milk orders and were proposed for inclusion in the merged order. There was little discussion at the hearing concerning these definitions and no opposition to their inclusion in the merged order.

The fluid milk product and fluid cream product definitions were most recently revised in a national decision involving all Federal milk orders that was issued on February 5, 1993 (58 FR 12634), and which became effective on July 1, 1993. Official notice is taken of that decision, including the reasons set forth for the standards adopted in these definitions. They are incorporated by reference in this decision.

*Filled Milk: § 1007.17.* The term filled milk also is identical in all milk orders and was proposed for inclusion in the merged order. There was no opposition to this provision.

*Filled milk* is defined as any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without butterfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than six (6) percent nonmilk fat (or oil). In determining the classification of filled products, the same competitive criteria should apply to these products as to fluid milk products.

The *filled milk* definition stems from the Assistant Secretary's decision for all Federal orders issued October 13, 1969 (34 FR 16881). That decision is incorporated by reference in this decision.

*Commercial food processing establishment: § 1007.19.* A standard definition for commercial food processing establishment was added to all orders on July 1, 1993. The definition contained in the Assistant Secretary's February 5, 1993, decision (58 FR 12675) is just as appropriate for the merged Southeast order as it is for the individual orders of which it is comprised.

*Product prices: § 1007.20.* A final decision amending the Class II price under all Federal orders was issued January 27, 1995, and published February 2, 1995 (60 FR 6606). The decision changed the computation of the Class II price in a manner that removed the need for a section dealing with ''product prices.'' Since the amended language of the Class II decision is applicable to the merged order proposed in this proceeding, § 1007.20 has been removed.

*2(b). Classification of Milk: §§ 1007.40 through 1007.45.* Under a Federal milk order, milk is priced according to the form or manner in which it is used. Section 40 of the proposed order discusses the four classes of utilization under the order. Section 41 discusses how to classify ''shrinkage,'' the disappearance of skim and butterfat that occurs through handling, transporting, and processing milk. Section 42 sets forth rules for classifying skim milk and butterfat that is transferred or diverted between plants. Section 43 contains general rules pertaining to the classification of producer milk, and Section 1007.44, ''classification of producer milk,'' describes how to classify producer milk by allocating a handler's receipts of skim milk and butterfat to the handler's utilization of such receipts. Finally, § 1007.45 describes the market administrator's reports and announcements concerning classification.

The classification scheme proposed for the Southeast order is identical to the uniform classification plan now in use in the five individual orders and in most other Federal order markets. A detailed explanation of the purpose and application of these provisions is contained in the Department's final decisions that were issued February 19, 1974 (39 FR 9012), July 17, 1975 (40 FR 30119), and February 5, 1993 (58 FR 12634). Because these provisions deal with inter-order, as well as intra-order, movements of milk, they should be essentially uniform with the surrounding orders and adopted, with only a slight modification, for the merged order.

Under the present Georgia order, the application of § 1007.42(c) has been unclear with respect to the transfer or diversion of bulk fluid milk products to an exempt governmental agency plant. At present, if bulk milk is transferred to an exempt plant, it is automatically classified as Class I, based on the presumption that the transferred milk is needed only to supplement the own-farm production of the exempt handler. However, where the exempt handler has no own-farm production, this presumption has resulted in a Class I classification for milk that, in fact, was used in a Class II product. Therefore, this paragraph should be modified to provide an automatic Class I classification for transfers or diversions of fluid milk products to a producer-handler. It should also provide for a Class I classification for a packaged fluid milk product transferred to an exempt governmental agency plant defined in § 1007.8(e). However, in the case of bulk fluid milk products or fluid cream products transferred or diverted to an exempt plant, the classification should be based on the exempt plant's utilization as determined by the market administrator.

*2(c). Pricing of Milk:*[8] *§§ 1007.50–1007.54.* Milk pooled under most

[8] Several changes in pricing have been made in this final decision. Changes in Class II and III prices are the result of national decisions amending all

Continued

Federal orders is now priced in four use classifications: Class I, Class II, Class III, and Class III–A. Class I milk, which is generally milk consumed as a beverage, competes for sales on a local or regional basis; Class II milk products, which include soft dairy products such as cottage cheese, ice cream, and dips, compete on a regional basis, and Class III milk products (hard cheese and butter) and Class III–A products (nonfat dry milk) are products which can be stored for extended periods of time and compete for sales on a national basis.

There are several issues to be discussed in connection with the pricing of milk: Class III and III–A prices, the Class II price, the seasonal adjustment proposed for the Class III and III–A prices, the Class I price level, and the location adjustments that are needed for the new order.

*The Class III–A price: § 1007.50(d).* The present Class III–A price that is applicable to each of the individual orders should be continued for the Southeast marketing area. This price is based on a product formula, specified in § 1007.50(d), that is defined as the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing 0.4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent.

Class III–A pricing was added to the individual orders on December 1, 1993. The reasons for moving nonfat dry milk from Class III to Class III–A and for adopting the product formula described above were thoroughly explained in a final decision issued October 20, 1993, and published in the **Federal Register** on October 29, 1993 (58 FR 58112). The findings and conclusions of that decision are incorporated by reference in this decision. There was no opposition to a continuation of this price under the merged order.

*The Class III price: § 1007.50(c).* The Class III price for the Southeast order should be the ''basic formula price,'' as defined in § 1007.51(a) and as adopted for all Federal milk orders in a final decision issued January 27, 1995, and published on February 7, 1995 (60 FR 7290). The *basic formula price* is the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1007.74 and rounded to the nearest cent, plus or minus the change in gross value yield by the butter-nonfat dry milk and Cheddar cheese product price. This price will be used in each of the individual orders involved in this proceeding and in every other Federal order. It reflects the value of manufacturing grade milk used to produce hard cheese and butter and is equally appropriate for the Southeast marketing area.

*Seasonal Adjustment to Class III and III–A Prices.* The cooperative coalition proposal to seasonally adjust the Class III and III–A prices should not be adopted.

The proposal would reduce Class III and III–A prices by 10 cents during the months of December, January, and February and by 30 cents during the months of March, April, and May; it would increase these prices by 10 cents in June, 20 cents in July, 25 cents in August through October, and 15 cents in November.

The cooperative coalition's spokesman testified that there is considerable cost involved in balancing the seasonal excess supply of the proposed marketing area. The cooperative coalition proposal, he testified, is designed to relieve the handlers of some of the cost involved in assuming this role.

This proposal was opposed by a handler and a regional cooperative association in post-hearing briefs. Baker & Sons Dairy stated in its brief that while the simple average of the proposed seasonal adjustments would be mathematically neutral, they are far from neutral on a weighted average basis and would substantially reduce the blend price and producer income during the months of December through May. The handler also argued that this proposal undermines the principle of pricing Class III and III-A products on a national and international basis, and instead would give one area of the country an advantage over other areas.

Milk Marketing, Inc., a cooperative with dairy farmer members in eight states, also submitted a brief opposing any seasonal adjustment to the Class III and III–A prices. MMI wrote that plants utilizing milk in Class III and III–A during the months of March, April, and May would have a 30-cent per hundredweight advantage over plants regulated under other orders. It stated that this translates to a price advantage of 3 to 4 cents per pound for nonfat dry milk powder.

The proposal to seasonally adjust Class III and III–A prices cannot be justified on the basis of this hearing record. It is apparent from reviewing the market administrator's price announcements from December 1993 through March 1994 that much of the seasonally surplus milk in the proposed Southeast marketing area is manufactured into nonfat dry milk at the Mid-America Dairymen, Inc., plants in Lewisburg, Tennessee, and Franklinton, Louisiana. As a result of the institution of Class III–A pricing in December 1993, the cooperative has already obtained substantial relief in the pricing of Class III–A milk. For the four months from December 1993 through March 1994, the Class III–A price averaged $2.15 below the Class III price. This reduction in price for Class III–A milk would have reduced the blend price by approximately nine cents per hundredweight in the proposed market for these months if the merged order had been in effect.

Producers in this marketing area have already contributed to those organizations that are balancing the reserve supplies of the market, and no compelling reason exists on the basis of this record to increase this contribution by further reducing the Class III and III–A prices with the proposed seasonal adjustments. The proposal is therefore denied.

In its exception to the recommended decision, Mid-Am repeated its request for a seasonal adjustment of Class III and III–A prices. While conceding that Class III–A pricing does provide ''some relief'' to those handlers manufacturing nonfat dry milk, Mid-Am argued that ''Class III–A pricing does not provide relief from the costs associated with the seasonal variability of the supply of milk utilized to produce nonfat dry milk powder.''

Mid-Am's claims for adopting seasonal pricing of Class III and III–A milk are insufficient in view of the reasons set forth for denying seasonal pricing.

*Class II price: § 1007.50(b).* A final order amending Class II pricing under all Federal milk orders was issued on January 27, 1995, and published on February 2, 1995 (60 FR 6606). As amended, the Class II price is the basic formula price for the second preceding month, plus 30 cents. This price is adopted for the Southeast order for all of the reasons set forth in the final decision (i.e., See 59 FR 64524) pertaining to that issue. There was no opposition to the adoption of this price at the hearing, in briefs that were filed, or in the exceptions that were received.

Federal order Class II and III prices. In addition, plant location adjustments have been changed as a result of the comments received.

*Class I Pricing.* The Class I price under the proposed Southeast order should be determined by adding a Class I differential to the *basic formula price* for the second preceding month. This is the method for determining Class I prices under all Federal orders and the method proposed for the merged order. There was no opposition to this proposal.

As proposed by the cooperative coalition, the Class I differential applicable to the base zone, which includes Birmingham, Alabama, and Atlanta, Georgia, should be $3.08 per hundredweight, the differential that is now applicable to those locations under the Georgia and Alabama-West Florida orders.

In establishing the Class I price level, a primary consideration must be to attract an adequate supply of Grade A milk for fluid use, taking into consideration production within the marketing area relative to the demand for fluid milk by handlers regulated under the order and the cost of transporting bulk milk from surplus producing areas to supplement local production. However, an equally important consideration is to establish a Class I price that will provide proper alignment with Class I prices in neighboring markets. A Class I price that is too high could result in excessive milk production within the market and a retail price advantage for handlers regulated under lower-priced orders distributing packaged products in the marketing area. Therefore, the Class I price should not exceed the Class I price in the closest surplus-producing region plus the cost of transporting bulk milk from that area to this market.

Based on the current cost of transporting milk, which the cooperative coalition's spokesman indicated was in excess of 3.9 cents per hundredweight per 10 miles distance, the $3.08 Class I differential proposed for the base zone of the merged order should be high enough to ensure an adequate supply of milk but not too high so as to provide a pricing advantage for handlers in lower-priced markets to the north of the Southeast marketing area.

*Plant location adjustments: § 1007.52.*

This final decision, like the recommended decision, provides for 12 pricing zones. However, unlike the recommended decision, which provided for a base zone, five minus zones, and six plus zones, this final decision contains a base zone, six minus zones, and five plus zones. These zones, and the Class I differential adjusted for location for each zone, are shown on the map of the marketing area included in this decision. Table 1 identifies the plants designated by the numbers on the map.

Several changes in location adjustments have been made from those set forth in the recommended decision. Zone 1 has been expanded to include 5 counties that were part of Zone 2; a new zone, designated as Zone 3 on the map, has been added; several Arkansas counties, including the Little Rock area, have been added to the zone that encompasses the Memphis area (i.e., Zone 4); the changes to Zone 4 have resulted in a slight and non-significant reconfiguration of the Arkansas counties that are contained in Zones 5 and 6; Zones 9 and 10 have been combined into one zone with a $3.40 price; some of Zone 12 has been moved to Zone 11; and the Zone 12 price has been changed to $3.65. In addition, because of the addition of the new Zone 3, the recommended Zones 3–8 are now Zones 4–9. As a result of these modifications, Class I prices were reduced from those in the recommended decision by 5 cents at Nashville; 7 cents at Little Rock; 8 cents at Hattiesburg, Mississippi, and Cowarts, Alabama; 10 cents at Hammond, Louisiana; and 3 cents at Baton Rouge, New Orleans, and Mobile.

Although there is, in reality, one Class I price that will apply to the Southeast marketing area, when this price is adjusted for location, it results in a unique Class I price for each of the 12 zones of the marketing area. The Class I price that will be shown for the market will be the price applicable to Zone 7, the base zone (Zone 6 in the recommended decision). This zone includes Atlanta, Georgia, and Birmingham, Alabama, two of the market's key population centers.

In arriving at the appropriate location adjustments for the Southeast marketing area, several factors were taken into consideration. In addition to considering the prices that are now applicable in each of the separate areas and those embodied in the proposals submitted, it was necessary to consider other factors such as the prices in marketing areas contiguous to the Southeast marketing area, whether the prices in the individual marketing areas lined up properly on an east-to-west axis in the merged marketing area, the fluid needs throughout the marketing area, the supply of milk locally available to each plant within the marketing area, the competitive relationship among handlers in the marketing area, and the exceptions received in response to the recommended decision.

The zones in this decision were carefully drawn to provide proper alignment with the Carolina order to the east, the Upper Florida order to the south, the Texas and Southwest Plains orders on the west, and the Louisville-Lexington-Evansville, Paducah, and Tennessee Valley orders on the north; they were drawn so as to minimize price changes from one zone to the next zone; as much as possible, the zones were drawn so as to include in the same zone all plants located in close proximity to one another; and they were drawn in a way that will provide an incentive for milk to move from surplus production areas to metropolitan areas where distributing plants are located.

*Zone 7.* The base zone, Zone 7 (Zone 6 in the recommended decision), includes a band of counties extending from South Carolina on the east to Texas on the west. The $3.08 Class I differential applicable to this zone borders a $3.08 zone in the Carolina order and a $3.16 zone in the Texas order and a $3.00 zone in the Southwest Plains order. Included within this zone are three distributing plants in Georgia, three in Alabama, and two in Mississippi. The $3.08 adopted for the Georgia and Alabama plants is the same price that is now applicable to these plants and that was proposed by the cooperative coalition and Fleming Dairy.

The Mississippi portion of Zone 7 includes the Brookshire (Dairy Fresh) Dairy Products, Inc., plant in Columbus (Lowndes County) and LuVel Dairy Products, Inc., in Kosciusko (Attala County). At the present time, the price at the Columbus plant is $3.10, while the price in Kosciusko is $3.20. Proposal number 1 would have maintained these prices, while the Fleming Dairy proposal would have included the Columbus plant in its $3.08 zone and the Kosciusko plant in its $3.18 zone.

Lowndes and Attala Counties should be added to Zone 7 of the proposed Southeast marketing area with a Class I differential of $3.08. This price ties in well with prices to the east and west and will be 10 cents below the Class I price applicable to LuVel's closest competitor, Flav-O-Rich in Canton, which is about 50 miles southeast of Kosciusko.

The $3.08 price in Zone 7 extends into 6 counties in southern Arkansas, which are currently not regulated by any order. There are presently no distributing plants in this area. Seven counties in southern Arkansas, which contain no distributing plants and are not now regulated, have been removed from the base zone and placed in Zone 6. This change, and a similar conforming change to Zone 5, was made to maintain an orderly price surface in southern Arkansas following the

transfer of several counties in the Little Rock area to Zone 4.

One exception to the base zone price of $3.08 was filed on behalf of Barber (Birmingham) and Dairy Fresh (Greensboro). This exception is addressed after the discussion of Zone 9.

*Zone 8.* Zone 8 (Zone 7 in the recommended decision) should have a Class I differential adjusted for location of $3.18 (i.e., a plus location adjustment of 10 cents). This zone borders a $3.23 zone under the Carolina order on its easternmost edge and a $3.16 zone under the Texas order on its western border. There are five distributing plants in this zone: Foremost Dairies in Shreveport, Louisiana; the Borden Company in Monroe, Louisiana; Flav-O-Rich in Canton, Mississippi; Kinnett Dairy in Columbus, Georgia; and the Borden Company in Macon, Georgia. The Shreveport and Monroe plants are now in a $3.28 zone under Order 96, the Flav-O-Rich plant is in a $3.35 zone under Order 94, and the Columbus and Macon, Georgia, plants are in a $3.18 zone under Order 7.

Testimony at the hearing indicated that handlers in northwestern Louisiana compete with handlers in east Texas who are subject to a $3.16 price. It was also pointed out in testimony and in a brief that Dallas, Texas, which is roughly the same latitude as Shreveport, had the same price as Shreveport from 1985 through 1991, after which the Dallas price was reduced from $3.28 to $3.16.

Data and testimony in the record also indicated that there are abundant supplies of milk available to the Shreveport and Monroe handlers in nearby De Soto Parish and in Hopkins County, Texas, which produced 74 million pounds of milk in December 1992.

The $3.28 price that presently applies at Shreveport and Monroe and which was proposed for this area by the cooperative coalition is too high in relation to the $3.16 Class I differential under the Texas order. In the absence of any testimony indicating that the Shreveport/Monroe area is a deficit area needing an unusually high price to attract a supply of milk, the price in that area should be reduced to $3.18.

The price at the Flav-O-Rich plant in Canton should be reduced by 17 cents to provide proper alignment with areas to the east and west of Canton. Although the competitive relationship will be changed between Flav-O-Rich, Canton, and its nearest competitor, the Borden plant in Jackson, Mississippi (Zone 9), the 10-cent difference in price is not unreasonably wide in view of the roughly 25 miles from Canton to Jackson and is necessary to provide a proper price relationship with areas to the east and west of Canton.

*Zone 9.* Zone 9 (formerly Zone 8 in the recommended decision) of the proposed marketing area includes no plants in Louisiana or Georgia, but does encompass one plant in Mississippi and two plants in Alabama.

The Mississippi plant in Zone 9 is the Borden plant in Jackson, while the two Alabama plants are the Superbrand and Barber Pure Milk Company plants in Montgomery. Under Order 94, the Jackson plant now has a Class I differential adjusted for location of $3.35. As proposed by the cooperative coalition and Fleming Dairy, that would also be the price under the merged order. The two Montgomery plants also now have a Class I differential adjusted for location of $3.35, which was also the price proposed for those two areas.

The price in Jackson, Mississippi, and Montgomery, Alabama, should be reduced from $3.35 to $3.28. These plants are on nearly the same east-west plane as Dallas, Shreveport, and Monroe, which would be subject to a $3.18 price. There was no indication of a problem attracting a milk supply in this area, and there are no plants in the immediate area that would be negatively impacted by this modest reduction in price. Accordingly, the pricing in the four separate marketing areas should be integrated by the creation of this $3.28 zone.

Fleming and Purity took exception to the recommended 7-cent price reduction at Jackson, Mississippi, and Montgomery, Alabama. They argued that this change was not proposed or supported and is untested by the realities of supply and demand. Finally, they were concerned that the milk supply of handlers in Jackson and Montgomery might be jeopardized by the price reduction.

Neither the supplier of the Jackson and Montgomery plants nor the handlers themselves filed comments suggesting a problem with the proposed price of $3.28. In terms of inter and intra-order alignment, a price of $3.28 appears to line up well with prices to the north, south, east and west. It is 170 miles from Mobile to Montgomery. If the transportation cost were computed from Mobile, the price at Montgomery would be $3.23 (i.e., $3.65 − [17 × .025]). If transportation cost were added to the price at Birmingham, the price would be about $3.33 (i.e., $3.08 + [10 × .025]). Based on prices to the east and west of the marketing area, $3.28 is the correct price for this area.

Barber and Dairy Fresh also objected to the lower Class I price at LuVel Dairy Products, Inc., Kosciusko, Mississippi, from $3.20 to $3.08. They stated that there was no support in the record to make this change.

As explained in the recommended decision, the prices at Kosciusko, Canton, and Jackson were too high in relation to the prices east and west of those locations. To maintain the existing prices at those locations while reducing the prices in northern Louisiana and northern Mississippi would have put those handlers at a competitive disadvantage. Neither Flav-O-Rich nor Borden nor LuVel excepted to this price reduction on grounds that it would jeopardize their milk supply. In fact, the blend price under the merged order at those locations is likely to offset the price reduction so that the lower Class I price should have no impact on their ability to attract a supply of milk.

*Zone 10.* Zone 10 in this final decision is a combination of Zones 9 and 10 as contained in the recommended decision. The new Zone 10 runs from the Atlantic Ocean on the east to a $3.34 zone under the Texas order on the west. The differential price adjusted for location in Zone 10 should be $3.40. There are no distributing plants within this zone in Louisiana, but there is one nonpool plant operated by Hershey Foods in Savannah, Georgia, a pool distributing plant operated by Dairy Fresh Corporation at Cowarts, Alabama, and another Dairy Fresh plant at Hattiesburg, Mississippi. The Hershey plant in Savannah is now subject to a $3.38 price under Order 7; the Cowarts plant is subject to a $3.38 price under Order 93; and the Hattiesburg plant has a price of $3.45 under Order 94. Both the cooperative coalition and Fleming Dairy proposed a continuation of current prices for this area.

A price of $3.48 was recommended for the Cowarts and Hattiesburg plants in recommended Zone 10 and a price of $3.38 for the Savannah plant in recommended Zone 9. This price structure would have resulted in a 10-cent price increase for the Cowarts plant, a 3-cent price increase for the Hattiesburg plant, and no change in price for the Savannah plant. After reviewing the comments submitted and further analyzing the market structure in this area, Zones 9 and 10 should be combined with a price of $3.40 providing for a smoother pricing transition between Zones 9 and 11.

Barber (Birmingham) and Dairy Fresh (Greensboro) excepted to the price reduction of 17 cents at the Flav-O-Rich plant at Canton, Mississippi, and the 7-cent price reduction at the Borden plant

at Jackson, Mississippi, in relation to the 3-cent increase in price at the Dairy Fresh plant at Hattiesburg. The exception noted that the price at Hattiesburg would be increased by three cents to $3.48 while the price at New Orleans would be lowered 17 cents to $3.68. This would lower the difference between the Hattiesburg and New Orleans Class I prices to 20 cents from its present 40-cent level. These handlers asked: ''What kind of equity is this when price zones are set up so that the price at the plant in Hattiesburg is 30 cents higher than for a plant located in Canton 105 miles north of Hattiesburg and only 20 cents lower for plants located in New Orleans 105 miles south of Hattiesburg?''

Finally, Dairy Fresh Corporation, on behalf of its plant in Cowarts, Alabama, excepted to the price proposed for its plant at Cowarts. It argues that there was no proposal to change this price and no record evidence to support the proposed price. The price should be returned to its present $3.38 level, it concludes.

The price change at Hattiesburg, from $3.48 in the recommended decision to $3.40 in this final decision, will reduce the Hattiesburg price by five cents from its present $3.45 level under Order 94. This plant is in a heavy production area so the lowering of its price should not affect the plant's milk supply. From the standpoint of Class I price alignment, the lower price at Hattiesburg will not disrupt price alignment with nearby competitors. Hattiesburg, for example, is 109 miles to New Orleans and 98 miles to Mobile. Based on a transportation allowance of 2.5 cents per 10 miles, the price at Hattiesburg in relation to New Orleans should be no lower than $3.37 [i.e., $3.65 − (11 × .025)], while the price at Hattiesburg in relation to Mobile should be no lower than $3.40 [i.e., $3.65 − (10 × .025)].

With these price changes, there will be a 12-cent difference in price between Hattiesburg and Jackson (i.e., $3.40 − $3.28). This is two cents greater than the difference that now exists between these two locations and provides no Class I price advantage to the Borden plant in Jackson. The 105-mile distance between Jackson and Hattiesburg would support a price difference of 28 cents (i.e., 11 × .025) between these locations. There is no reason to expect handlers to pay any more than is necessary to obtain an adequate supply of milk for fluid use. The prices at Jackson and Canton are appropriate using this standard.

A $3.40 price in the new Zone 10 will increase the Cowarts plant's price by 2 cents in comparison to its present $3.38 level under Order 93, but it will be lowered by 8 cents in comparison to the $3.48 price for this area in the recommended decision. Southern Alabama is a deficit area and milk is transported to plants in this area from as far away as central Tennessee. A price of $3.48 for Cowarts was proposed in the recommended decision to ensure that the Dairy Fresh plant would be adequately supplied under the merged order, as well as to provide a smooth transition in price from southern Alabama and Georgia into the $3.58 price zone of the Upper Florida marketing area. Like the plants in Mobile, the Cowarts plant now enjoys the relatively high utilization of the Alabama-West Florida order. Under the merged order, the uniform price will probably be lower at Cowarts and the plant may have difficulty attracting a supply of milk. Nevertheless, in view of the strong opposition of Dairy Fresh to any price increase at Cowarts, the price should be lowered to $3.40. Cowarts is more than 190 miles from Mobile, so the 25-cent price difference between Cowarts and Mobile is far below the cost of shipping milk from Cowarts to Mobile. Therefore, the reduction in price at Cowarts will cause no disruption in Class I price alignment with Mobile.

The Hershey plant at Savannah, Georgia, will experience a two-cent higher Class I price as a result of this change. This minimal price change should have little impact on this plant, which has a relatively high Class II utilization.

*Zone 11.* Zone 11 of the Southeast marketing area borders the Upper Florida order on the east, where the Class I differential price is $3.58, and the Texas order on the west, where the price is $3.34. The price in Zone 11 should be $3.58.

Zone 11, which has been modified by the addition of several parishes and counties from Zone 12, now includes only one county that is split between two zones. The portion of Mobile County, Alabama, that is within 20 miles of the Mobile City Hall is in Zone 12, while the remainder of Mobile County is in Zone 11.

With these modifications, there is now one distributing plant in Zone 11 at Hammond, Louisiana, operated by Superbrand Dairy Products, Inc., and there are two Mid-Am manufacturing plants in the Louisiana parishes of Tangipahoa and Washington. In Tangipahoa Parish, Mid-Am operates a cheese plant in Kentwood. In Washington Parish, which is to the east of Tangipahoa Parish, it operates a butter-powder manufacturing plant in Franklinton.

At the present time, the Class I differential price at Hammond, Kentwood, and Franklinton is $3.65 under Order 94. The cooperative coalition proposed a continuation of this price level under the merged order, as did Fleming Dairy, Dairy Fresh, Acadia Dairy, Barber Dairy, Brown's Velvet Dairy, Guth Dairy, Kleinpeter Dairy, and Walker Resources.

In August 1993, Tangipahoa Parish produced 23 million pounds of milk, far more than any other parish in Louisiana. Washington Parish was the next highest production parish that month, producing 14.6 million pounds. Directly north of Tangipahoa and Washington Parishes are the Mississippi counties of Pike and Walthall, which are the two highest production counties in Mississippi, producing 6.9 and 7.0 million pounds, respectively, in August 1993.

Because of the substantial milk production in this area of southern Mississippi and southeastern Louisiana, this area serves as a reserve supply area for much of the Southeast. In August 1993, for example, more milk was supplied to the Alabama-West Florida market from Washington Parish than any other county or parish in the Southeast.

A $3.58 price level for Zone 11 will align properly with the Upper Florida marketing area and will provide a smooth transition to Zone 12, which based upon this decision should be priced 7 cents above Zone 11. Milk is not needed in Zone 11, but it is needed in Zone 12. Therefore, the price in Zone 11 needs to be high enough to provide proper alignment with lower prices north of this area and higher prices south of the area, but it does not have to be kept at its present level, particularly since the price in Zone 12 is being reduced.

Although Zones 11 and 10 ($3.58 and $3.40, respectively) of the Southeast order abut a $3.34 zone under the Texas order, there are no distributing plants in the Texas county of Newton, which borders these zones. Due to the extremely large zones in the Texas marketing area, it is not possible to gradually increase prices on a north to south axis in Louisiana while simultaneously matching up perfectly with the zone prices of the Texas marketing area. Because there are no plants in this area, however, this is not a serious problem at the present time.

*Zone 12.* Zone 12 contains several of the large population centers in this marketing area, including Baton Rouge, New Orleans, and Mobile. It extends from Mobile, Alabama, on the east to the Texas border on the west. The Class I

differential adjusted for location for Zone 12 should be $3.65 or three cents below the recommended decision's price of $3.68.

At present, the prices at Baton Rouge, New Orleans, and Mobile are $3.78, $3.85, and $3.65, respectively. Under the cooperative coalition proposal, these prices would stay at their present levels. Under the Fleming Dairy proposal, and under Proposal No. 3, which was jointly submitted by Dairy Fresh, Barber Dairy, Brown's Velvet Dairy, and Kleinpeter Dairy, the price at Baton Rouge would be reduced to $3.65 and the price at New Orleans would be reduced to $3.72. Fleming Dairy also proposed a price of $3.65 for Mobile.

A spokesman representing Dairy Fresh of Louisiana (i.e., part of the Fleming Companies), which operates a distributing plant in Baker, Louisiana (about five miles north of Baton Rouge), testified that the Class I prices in southern Louisiana should be adjusted for three reasons. First, he said that the current Class I price for southern Louisiana which was established by Congressional mandate in 1985 has put this area significantly out of alignment with the price grid of other locations in the South. The Congressionally-mandated Class I pricing in southern Louisiana, he said, was not justified in the 1985 legislative history and cannot be justified now, particularly since the area north of Lake Pontchartrain and Lake Maurepas contains one of the greatest concentrations of milk cows of the deep South.

The witness testified that in the Federal order system higher Class I prices at one location compared to another suggest a need to attract milk from distant supply areas. But southern Louisiana, he pointed out, is not more deficit in milk production than Florida. In fact, he added, southern Louisiana milk supply is regularly transferred, primarily by Dairymen, Incorporated, to Florida during short production months to supplement Florida's raw milk requirements. He said that Louisiana shipments to Florida totaled 17 million pounds in 1989, 4 million pounds in 1990, 5 million pounds in 1991, 2.5 million pounds in 1992, and in August 1993 seven loads containing 330,000 pounds.

The second reason why southern Louisiana prices should be lowered, according to the witness, was that in September of 1990 a new Superbrand plant commenced operation in Hammond, Louisiana, which is about 40 miles due east of Baton Rouge and 55 miles north of New Orleans. He said the Superbrand plant was 25 miles closer to New Orleans than Baton Rouge, yet the Hammond plant enjoyed a Class I price of $3.65, which is 13 cents lower than the Baton Rouge price of $3.78.

The witness testified that the mileage allowance between Hammond and New Orleans is 3.6 cents per hundredweight per ten miles while the mileage allowance between Baton Rouge and New Orleans is 0.8 cents per hundredweight per ten miles. He stated that the Hammond allowance clearly exceeds the prevailing rate of about 2.0 cents to 2.5 cents per hundredweight per 10 miles that prevails elsewhere in the Southeast.

The Dairy Fresh witness stated that the third reason why southern Louisiana prices should be lowered is that in 1991 the Department lowered the Texas Class I differential by 12 cents per hundredweight. As a result, he said, milk processors in Texas immediately received a relative 12-cent advantage in their ability to compete with Louisiana processors. Prior to this decision, he testified, handlers in the Houston-Beaumont zone of the Texas market paid 4 cents per hundredweight more for their Class I milk than processors in the Baton Rouge area. After the change, however, these processors paid 8 cents less than the Baton Rouge processors, he added. The witness said that the Texas plants with regular distribution in Louisiana include two plants in Tyler, one in Conroe, and one plant in Fort Worth. One of the Tyler plants, he estimated, distributed 4 million pounds of Class I milk per month to retail stores in Louisiana.

The witness also testified that gross margins on Louisiana wholesale milk prices have tightened up since the Department lowered the Texas prices. He said it was time to address and correct the problem of competitive inequity and price misalignments without further delay and urged the Department to address the southern Louisiana pricing problems by partial recommended and final decisions without waiting for analysis and resolution of other merger issues.

A spokesman for the Southern Foods Group (SFG) testified that SFG agreed with Fleming Dairy that the price in southeastern Louisiana was too high relative to other areas. He also stated that the price surface that exists there today is solely the result of the 1985 Farm Bill, which established statutory minimums for Class I differentials in New Orleans and Shreveport. He added that there is no longer a reason to maintain the existing price structure in southern Louisiana because the Congressional mandate to increase prices was not binding after April 30, 1988.

The SFG witness testified that the largest population center for the Southeast order is Zone 8 of Proposal No. 1 (i.e., the Atlanta area) with a population of 3.3 million. He said the next most populous area is the Birmingham, Alabama, area with 1,717,455 people, followed by the Baton Rouge-West Louisiana and southern Georgia areas with 1.3 million each, and then New Orleans with 1.2 million.

Using data on nearby milk supplies and per capita consumption of fluid milk, the witness asserted that there is more production in relation to population in southern Louisiana than in any other population center of the marketing area. He said that nearby milk supplies in southern Louisiana for December 1992 exceeded 53.5 million pounds while all of the milk production located in Zone 8 of Proposal No. 1 was 44.2 million pounds. In contrast, he pointed out, the population of Zone 8 exceeded southern Louisiana by 2.4 million people. Therefore, he concluded, the milk price in Baton Rouge and New Orleans is higher than is warranted.

In its post-hearing brief, SFG stated that there should be no difference in price between Baton Rouge and New Orleans. The brief pointed out that prior to the 1985 Farm Bill, the Class I price at Baton Rouge and New Orleans was the same. It also emphasized that the distance from the large pool of milk in Tangipahoa Parish is roughly the same to New Orleans as to Baton Rouge because of the causeway over Lake Pontchartrain.

A witness appearing on behalf of the Louisiana Farm Bureau Federation stated that processors in Louisiana are losing fluid milk sales and producers are also losing their market. He testified that it was important that the pricing structure be aligned appropriately, not only within the consolidated area, but also with the adjacent market areas. He asked the Department to objectively evaluate the pricing structures in the proposed consolidated area. Louisiana processors cannot be competitive, he noted, if they are subject to unreasonably high prices relative to their competition.

The witness testified that current Federal order price alignment within, and adjacent to, Louisiana markets has resulted in prices that are jeopardizing the economic well-being of the State's dairy industry. Just as important, he added, it is contributing to a decline in the critical mass of services essential to a healthy dairy industry (e.g., milk hauling, veterinary services, feed milling, etc.).

The Louisiana Farm Bureau witness indicated that ''the decline of our local markets and loss of our processing industry, can be directly linked to imports from adjacent areas.'' He said that the present price structure has resulted in the importation of unneeded milk from Texas which, in turn, has caused the unnecessary movement of milk at the expense of Louisiana dairymen.

It is concluded from the testimony in this record that a reduction in price is absolutely necessary in the Baton Rouge and New Orleans areas and that there is no reason for Hammond to be priced 13 cents below Baton Rouge or for Baton Rouge to be priced seven cents below New Orleans. Baton Rouge and New Orleans should be in the same zone with the same price, and Hammond should be priced 7 cents lower.

The available supplies of milk in the New Orleans/Baton Rouge area do not justify a continuation of the present price structure. From December 1983 to December 1992, the milk supply in the two Louisiana parishes of Tangipahoa and Washington grew by more than 29 percent, from 39,492,177 pounds of milk per month to 51,125,921 pounds of milk per month. In December 1992, more than 33 million pounds of milk produced in Tangipahoa Parish were pooled on Orders 94 and 96. There is another 15.9 million pounds of milk available in Washington Parish and in excess of 4.6 million pounds for December 1992 from St. Tammany and St. Helena Parishes. In total, there were 55 million pounds of milk in parishes close to the New Orleans/Baton Rouge area.

The Class I differential adjusted for location for Zone 12 should be $3.65, which is 13 cents below the present price in Baton Rouge and 20 cents below the present price in New Orleans. It is also five cents below the adjacent Zone 8 price of Order 126.

In this southernmost part of the Southeast marketing area, there is obviously no reason to provide higher prices to preserve alignment with more southerly areas because there is nothing but water south of New Orleans. The question that must be asked then is whether or not a higher price is needed to attract a supply of milk to this area.

The testimony and data in this record indicate that there is more milk available to handlers in New Orleans and Baton Rouge than to handlers in many other parts of the marketing area. It would therefore appear that, not only are the present Class I price levels in Baton Rouge and New Orleans not needed to help handlers attract a supply of milk to this area, but, in fact, may hinder the movement of bulk milk to other areas where it is needed for fluid use.

From May 1984 to May 1993, the total packaged distribution of fluid milk products in the Greater Louisiana marketing area decreased from 46.7 million pounds to 46.4 million pounds, or by .6 percent. During this same time period, the distribution of packaged fluid milk products in this marketing area by handlers regulated under the Texas order increased from 2.5 million pounds to 9.8 million pounds, or by approximately 290 percent. The total distribution in the area from handlers regulated under all other Federal orders increased from 11.9 million pounds to 15.2 million pounds (i.e., 28 percent).

In the Order 94 marketing area, the total packaged distribution of fluid milk products declined from 64.0 million pounds to 61.5 million from May 1984 to May 1993, or by 3.9 percent. During this time period, the distribution of packaged fluid milk products from all other orders increased from 9.3 million pounds in May 1984 to 13.3 million pounds in May 1993, or by 43 percent.

These comparisons paint an unhealthy picture for handlers in Mississippi and Louisiana. While their total disposition of fluid milk products has gone down, more and more of what remains of their market is being serviced by handlers outside the marketing area. Although there may be other explanations for these statistics, one thing that definitely happened during this timeframe is that the Class I prices in Baton Rouge and New Orleans went up in relation to all of the surrounding orders.

The pricing structure adopted here for Zone 12 will restore proper price alignment to this area in relation to prices in surrounding orders.

The Mobile, Alabama, area should also be part of Zone 12; specifically, that part of Mobile County, Alabama, within 20 miles of the Mobile City Hall. The Zone 12 price of $3.65 is the same price that now applies to Mobile under Order 93 and which was proposed for this area by the cooperative coalition.

There are two plants in the Mobile area: Barber Pure Milk Company (Barber) in Mobile and Dairy Fresh Corporation (Dairy Fresh) in nearby Prichard.

At the hearing, Barber and Dairy Fresh proposed maintaining the present $3.65 Class I price at Mobile, but increasing the producer location adjustment by an additional 22 cents. Under the cooperative coalition proposal and the Fleming Company proposal, the Class I price also would have remained at the $3.65 level.

Under the Barber/Dairy Fresh proposal, handlers in their proposed Zone 17–A (i.e., that part of the cooperative's proposed Zone 17 within the States of Alabama and Florida) would pay a 57-cent location adjustment on their Class I milk (i.e., $3.65), but the producers delivering milk to these plants would be paid an additional 79 cents (over the base zone price) on all of the milk delivered to the plants.

The spokesman for Barber and Dairy Fresh testified that the demand for Class I milk in the south Alabama area and western panhandle section of Florida far exceeds the supply. He said that historically milk has been shipped considerable distances to this area.

The witness testified that in December 1992 the Barber and Dairy Fresh plants received approximately 17.9 million pounds of producer milk from non-member producers and cooperative association member producers, of which 7.3 million pounds, or 41 percent, was received from producers located in Louisiana and Mississippi. He stated that there is approximately 2.5 million pounds of milk per month located in southern Alabama and the panhandle of Florida that is not being shipped to the Barber and Dairy Fresh plants. Even if this milk were delivered to those plants, he said, there would remain a shortfall of about 4.8 million pounds of milk. To maintain this supply, based on current price relationships, he added, will cost handlers from 33 cents to 75 cents per hundredweight.

The Barber/Dairy Fresh witness indicated that the incentive for these producers to ship their milk to plants located in the Mobile area has been the Order 93 blend price, which averaged 53 cents higher than the Order 94 blend price in southeastern Louisiana/southern Mississippi for the 12 months of September 1992 through August 1993. The problem, he stated, was that in merging these orders, this blend price incentive will be eliminated. Without an additional incentive to move milk to Mobile, according to the witness, it is likely that some handlers in the Mobile area will be forced out of business.

The witness stated that there are several handlers competing for the milk supply in Louisiana and Mississippi who have plants located in that heavy production area. Among these, he said, are Mid-America Dairymen, Inc., which operates a cheese manufacturing plant in Kentwood, Louisiana, and a butter-powder manufacturing plant in Franklinton, Louisiana; Flav-O-Rich, which operates a distributing plant located in Canton, Mississippi; Superbrand Dairy Products,

Incorporated, which is located in Hammond, Louisiana; Borden, Inc., which has plants in Baton Rouge, Louisiana, and Jackson, Mississippi; and Dairy Fresh of Louisiana, which operates a distributing plant in Baker, Louisiana.

According to the witness, Gulf Dairy Association charged an additional 30 cents per hundredweight for milk delivered to Mobile on top of the 53-cent blend price difference prevailing between Orders 93 and 94 between September 1992 and August 1993. He stated that Gulf Coast Dairymen's Association of Gulfport, Mississippi, charged an additional 40 cents per hundredweight for milk delivered to Mobile.

The Barber/Dairy Fresh proposal was actively opposed by most of the other hearing participants and was supported by no one other than the proponents. The effect of this proposal would be to have producers and handlers in other parts of the marketing area subsidize the delivery of milk to the Barber and Dairy Fresh plants in the Mobile area. Those parties opposed to the proposal argued that they should not have to subsidize Barber and Dairy Fresh in attracting a milk supply. They contended that if higher prices to producers are needed in Mobile, the handlers operating plants in Mobile should pay higher Class I prices to reflect those higher costs.

The problem posed by the Mobile handlers can be addressed by providing a greater transportation allowance to move milk to the Mobile area. At the present time, the Mobile area is priced the same as the heavy production area in southern Mississippi and southeastern Louisiana. Thus, there is no incentive for a producer to incur the cost of shipping milk from this area to Mobile. By maintaining a $3.65 differential price in Mobile and decreasing the price at alternative locations—i.e., by 10 cents at Kentwood, Franklinton, and Hammond, Louisiana; by 20 cents in New Orleans; by 7 cents in Jackson, Mississippi, and Montgomery, Alabama; by 17 cents in Canton, Mississippi; and by 12 cents in Kosciusko, Mississippi—the blend price in the Mobile area will cover more of the transportation costs incurred in shipping milk to Mobile as compared to these alternative delivery locations.

If, despite these adjustments, the Mobile handlers still find it difficult to attract milk to their plants, the location adjustment in the Mobile area can be increased further to provide more transportation allowance for shipping milk to Mobile. If this proves necessary, however, it is only appropriate to increase both the Class I price and the producer blend price by the same amount. In that way, the higher Class I prices of handlers in the Mobile area will be passed on to consumers, who should, appropriately, pay higher prices reflective of the higher costs of bottling milk in the Mobile area or transporting packaged milk to the Mobile area from plants at other locations.

In its exception, Mid-Am agreed with the recommended decision in putting Baton Rouge and New Orleans in the same pricing zone. Mid-Am disagreed, however, with also including Hammond in that zone (Zone 12). It argued that the distance from Kentwood, Louisiana, which is the center of the Tangipahoa Parish supply area, to Hammond is 34 miles, but the distance to Baton Rouge is 82 miles and the distance to New Orleans is 73 miles. Mid-Am maintains that the added distance from the supply area justifies at least a 9-cent higher price at New Orleans and Baton Rouge relative to Hammond. Using the same analysis with respect to the distance from Franklinton, Louisiana, to Baton Rouge, New Orleans, and Hammond justifies a price at Hammond that is 7 cents lower than the New Orleans and Baton Rouge prices, according to the cooperative. Mid-Am concluded that to improve alignment between Hammond, Baton Rouge, and New Orleans, the Louisiana parishes of Livingston, Tangipahoa, and St. Tammany and the Mississippi counties of Hancock, Harrison, and Jackson should be added to Zone 11 and the price of Zone 12 should be reduced from $3.68 to $3.65.

Dairy Fresh of Louisiana, Inc., the operator of a distributing plant at Baker (Baton Rouge), Louisiana, suggested expanding Zone 10 to include Zone 11 and applying a price of $3.48 to this combined zone. It also suggested reducing the price in Zone 12 to $3.58. It argued that no point is served in having a separate zone which only contains Mid-Am's two manufacturing plants at Franklinton and Kentwood; reducing the price at these plants to $3.48 would enhance the blend price for the market and would encourage milk to move from this high production area to distributing plants at Hattiesburg, Mississippi; Cowarts, Alabama; and Mobile, Alabama.

Dairy Fresh also stated that revamping prices in this way will not create any alignment problems with the Upper Florida order or with the Houston/Beaumont area of the Texas order because there are no Texas plants in the immediate vicinity of southern Louisiana. It concluded that its suggested lowering of prices in the Baton Rouge/New Orleans area will restore the relationship that existed between south Louisiana and the Houston area prior to 1991, when the Texas price was reduced by 12 cents.

Barber and Dairy Fresh objected to the prices recommended for the Mobile area. These handlers stated that the Department erred in dismissing their proposal for separate Class I and producer location adjustments. They also wrote that separate location differentials for producers delivering milk to pool plants located within the marketing area are a method that could and should be used in addition to the Class I price to move milk to areas within the market where the milk supply is short.

Barber and Dairy Fresh also objected to placing Mobile, Alabama, in Zone 12 and increasing the price there by three cents. They urged the Department to reduce their price to $3.58 or at least to the present level of $3.65.

Finally, Gold Star Dairy objected to the price reduction in southern Louisiana because it ''upsets the competitive balance.'' It stated that ''it is improper to upset the economic balance without evidence of any change in marketing conditions justifying a change in prices.''

After reviewing the comments cited above and further analyzing the market structure of Zone 12 and the surrounding areas, it is concluded that the Zone 12 price should be lowered from $3.68 to $3.65. Also, as mentioned previously, the Louisiana parishes of Tangipanoa and St. Tammany, and the Mississippi counties of Hancock, Harrison, and Jackson should be moved from Zone 12 to Zone 11. This reduces the price at Hammond by 7 cents. Bulk milk delivered to Hammond is not worth as much as milk delivered to Baton Rouge or New Orleans and it is appropriate to have a lower price at Hammond, as suggested by Mid-Am.

Livingston Parish should not be shifted from Zone 12 to Zone 11, as suggested by Mid-Am. Although there presently are no plants in this parish, one could be built there in the future and have a price advantage over nearby plants in Baton Rouge. Livingston Parish should remain in Zone 12 to serve as a buffer between Baton Rouge and lower-priced Zone 11.

In Federal order markets, prices gradually increase from the Upper Midwest to the tip of Florida. The present pricing structure, which has evolved over time, reflects the fact that some southern areas occasionally need to import milk from surplus areas to the north. This is not true for every southern area. There may be pockets of heavy production, such as central Tennessee or southern Louisiana, which

do not require supplemental milk from other areas, but which have higher prices nevertheless to preserve Class I price alignment with higher-priced areas to the south.

As noted above, southern Louisiana is a heavy production area. The handlers in Hammond, Baton Rouge, and New Orleans do not have to import milk from distant areas because they have an abundant supply at their doorstep. Because there are no handlers in the Gulf of Mexico, prices do not have to be increased at 2.5 cents per 10 miles through southern Louisiana to preserve price alignment with areas to the south of New Orleans.

The argument of Barber and Dairy Fresh that prices should be higher in New Orleans so that Dairy Fresh at Hattiesburg can afford to ship and sell packaged milk in New Orleans does not meet the standards of the Agricultural Marketing Agreement Act. Location adjustments reflect the cost of hauling bulk milk from production areas to processing plants. The adjustments compensate producers for the economic service they provide to handlers.

Similarly, the position of Gold Star Dairy that the reduction in price at New Orleans upsets the competitive balance between Little Rock and New Orleans provides no justification for not reducing a price that obviously is higher than it needs to be.

The goal of the Federal milk order program is to ensure an adequate supply of milk for fluid use and to establish and maintain orderly marketing conditions. Consumers in New Orleans should not have to pay higher milk prices simply to reflect the transportation cost of shipping packaged products there from Hattiesburg, Texas, Little Rock, or anywhere else because there are milk processing plants in the New Orleans area that can obtain bulk fluid milk at a cost that is less than the cost of hauling packaged milk.

*Zone 6.* Immediately north of the base zone, a new, transition zone (Zone 5 in the recommended decision) should be created with a Class I differential adjusted for location of $2.98. Currently, there are no distributing plants in this zone. However, at the time of the hearing there was one distributing plant—the Meadow Gold plant at Gadsden, Alabama—in this zone. Since the hearing, this plant has closed.

A slightly lower price should apply to Zone 6 to reflect its closer proximity to the heavy production area in south central Tennessee and to provide a smooth north to south price surface through this part of the marketing area. The $2.98 price in Zone 6 borders the dividing line of a $3.08 zone and $2.93 zone under the Carolina order. On the west, this zone borders a $3.00 zone under the Southwest Plains order.

Just north of Zone 6, the Class I price drops to $2.83 in Zone 5. It is necessary to create an intermediate Zone 6 to eliminate a sharp 25-cent drop that otherwise would occur between Zone 5 and the base zone.

*Zone 5.* Zone 5 (Zone 4 in the recommended decision) includes the northern tier of counties through Georgia, the northern two tiers of counties through Alabama and Mississippi, and a tier of counties through Arkansas. This zone should have a differential price adjusted for location of $2.83. As mentioned previously, the area of Arkansas included in Zone 5 has been modified from the recommended decision because of the changes made to Zone 4. With the modification, there are no plants in Arkansas in this zone.

There are no plants in the Georgia portion of Zone 5, which cuts through the Chattahoochee National Forest. In northwest Georgia, there are seven counties that are within the Tennessee Valley marketing area. Most of these counties also lie within the Chattahoochee National Forest. Although there are presently no plants in this area of Order 11, the location adjustment for a plant in this area that becomes regulated under the Southeast order would be minus 25 cents (i.e., a Class I price of $2.83).

There are three plants in the Alabama portion of Zone 5: Meadow Gold at Huntsville (Madison County), Dasi Products (partially regulated) at Decatur (Morgan County), and Shoals Cheese in Florence (Lauderdale County). The Class I price that now applies at these plants under Order 93 is $2.85.

In the Mississippi portion of Zone 5, there are two fully regulated distributing plants and one cheese plant. Barber Dairy operates a distributing plant in Tupelo (Lee County), and Avent's Dairy operates a distributing plant in Oxford (Lafayette County). The western border of this zone adjoins a $3.00 zone and a $2.77 zone under the Southwest Plains order.

Under the four separate orders, there are now four separate prices that apply to Zone 5: under Order 7, the price is $2.93; under Order 93, the price is $2.85; under Order 94, the price is $2.90; and under Order 108, the price is $2.77. Under the cooperative coalition proposal, the prices would remain at their present levels from northern Georgia to northern Mississippi. The Fleming Company would standardize the price at $2.85 from northern Georgia through northern Mississippi. AMPI proposed a $2.77 Class I price for the Little Rock, Memphis, and northwest Mississippi areas.

Under the merged order, a price of $2.83 should apply in this zone. This price would be 15 cents lower than Zone 6 to the south and 6 cents higher than Zone 4 on the north. The reason for selecting a price of $2.83 is that it lines up well with the prices on the east and west of the market and contributes to a smooth north to south transition within the marketing area.

*Zone 4.* Zone 4 (Zone 3 in the recommended decision) is comprised of the southernmost tier of counties through the State of Tennessee and has been reconfigured to include two tiers of counties in central Arkansas. It should have a Class I differential adjusted for location of $2.77.

There are six plants in this zone: Forest Hill Dairy and Harbin Mix in Memphis, Tennessee; Borden, Inc., Coleman Dairy, and Gold Star Dairy, in Little Rock, Arkansas; and Humphrey's Dairy in Hot Springs, Arkansas. At present, the Class I price at these locations under the Central Arkansas order is $2.77. The recommended decision proposed a price of $2.77 for Memphis and a price of $2.83 for the Little Rock area.

Gold Star Dairy argued in its exception that it had no notice that any price change was contemplated for Little Rock and that to change the price at Little Rock simply to tie together east-west price alignment was inappropriate. It suggested reducing the price at Little Rock to $2.77 by moving six Arkansas counties from Zone 4 to Zone 3.

Gold Star is incorrect in asserting that it had no notice. In any merger hearing, all order provisions are to be considered and are within the scope of the hearing. However, it is true that no attention was focused on the appropriate price at Little Rock at the hearing. Proponents assumed that the current pricing structure would be adopted.

A slightly higher price was recommended for the Little Rock area to better align prices east to west and to slightly enhance the uniform price at that location under the merged order. This was an increase of six cents and with the zone configuration in the recommended decision this price level seemed appropriate. However, with the reconfiguration of the zones in this final decision it is appropriate to return the price applicable at Little Rock to $2.77. Accordingly, the Arkansas counties of Polk, Montgomery, Garland, Saline, Pulaski, Lonoke, Prairie, Monroe, and Lee have been moved to the new Zone 4, thereby reducing the price at Little

Rock to $2.77, the level that now applies to that area under Order 108.

*Zone 3:* A new zone consisting of three counties in western Tennessee and nine counties in Arkansas should be created after reviewing the exceptions to the recommended decision.

Fleming and Purity opposed the inclusion of the Turner Dairies plant at Covington, Tennessee, in recommended Zone 2 with a price of $2.60. These handlers argued that Covington is in the Memphis Metropolitan Area and that it should retain the same $2.77 price that it had under the Memphis order. They stated that they compete with the Covington plant for route disposition in the Memphis area and would be seriously affected by the change.

Arkansas Dairy Cooperative Association, Inc. (ADCA), also commented on the proposed pricing for the Covington plant. It noted that while the plant now produces mostly Class II products, the proposed 17-cent lower price at this location could encourage the processing of Class I products there. ADCA also stated that even though Memphis is 36 miles south of Covington, the 17-cent price difference between the two locations would place suppliers of the Covington plant at a disadvantage vis-a-vis suppliers of the Memphis plant. This would create a substantial disincentive to supply that plant, they argued.

ADCA also commented on other problems which it saw with the proposed Zone 2. It stated that in October 1994 it purchased land in Damascus, Arkansas, to build a receiving station/balancing plant. When it made this commitment, it had no idea that this area would be priced 17 cents below the price that had applied to Van Buren County under the Central Arkansas order. It wrote that ''this is an inequitable result which surely would not have occurred if the plant had been in place at the time of the rulemaking and discussed at the hearing.''

A new zone should be added between recommended Zones 2 and 3 in Arkansas and western Tennessee. The price for this zone is $2.70, which is 7 cents lower than the Zone 3 price and 10 cents higher than the Zone 2 price. The new zone consists of the Arkansas counties of Johnson, Pope, Van Buren, Cliburne, Independence, Jackson, Craighead, Poinsett, and Mississippi; and the Tennessee Counties of Tipton, Lauderdale, and Haywood. This new zone, which includes the Turner Dairies plant at Covington and the plant which ADCA intends to build at Decatur, will reduce the price difference between the Turner Dairies plant at Covington and handlers in Nashville, Memphis, and Little Rock. It will also help to mitigate the price reductions cited by ADCA.

A $2.70 price for this new zone will improve alignment between Zones 2 and 3. Based on the 36-mile distance between Covington and Memphis, a 7-cent lower price for Covington is a little higher than the 10-cent difference that would be justified based on 2.5 cents per 10 miles. Similarly, based on a distance of approximately 40–50 miles from Damascus to Little Rock, a difference of at least seven cents is justified between those two points. Milk should be encouraged to move from Damascus to Little Rock, where it is needed by distributing plants for fluid use. In view of the fact that Covington and Memphis were in the same zone under the Memphis order and Van Buren County was part of the base zone under Order 108, it is appropriate to limit the difference to 7 cents between Zone 2 and new Zone 3.

The new $2.70 zone is not carried through central Tennessee. This is a departure from the pricing zones to the north and south of this zone which extend on an east-west plane through the marketing area. As noted previously, central Tennessee is a heavy supply area from which milk moves to various parts of the marketing area. This area includes Mid-Am's butter-powder plant at Lewisburg, which processes the market's surplus milk. Under the Alabama-West Florida order, the price at this plant is now $2.52, the same as the price applicable to the Purity plant at Nashville and 1.5 cents below the price at the Fleming Dairy plant, which has been regulated under the Georgia order. As proposed in the recommended decision, the price at Lewisburg was $2.60, the same as the price applicable at Murfreesboro and Nashville. This pricing was based, in part, on Fleming's testimony that the price at Lewisburg should be no higher than the price at Murfreesboro because otherwise producers would have an incentive to deliver their milk to Lewisburg for manufacturing use rather than to Murfreesboro for fluid use. The recommended decision attempted to extend this reasoning to the Nashville area as well by including Nashville in the same zone as the Murfreesboro and Lewisburg plants, but, as explained below, the Nashville handlers excepted to the higher price at Nashville and it has been changed.

With the addition of the new $2.70 zone, a question again arises concerning the proper price at Lewisburg. Based on higher prices to the east and west of Lewisburg, some might argue that Lewisburg should be in the $2.70 zone. Similarly, in terms of north-south Class I price alignment, it could be argued that Lewisburg should be priced at $2.70, seven cents lower than Giles County, immediately below Lewisburg. These considerations, however, are outweighed by the fact that there are no distributing plants in Tennessee south of Murfreesboro which would require a higher price at Lewisburg to preserve Class I price alignment. In addition, because the Lewisburg plant is a surplus processing plant, it is not necessary to increase the price at Lewisburg to $2.70 to assure that the plant receives an adequate supply of milk. Finally, the price at Lewisburg has been very close to the price applicable at the Purity and Fleming plants at Nashville and the necessity of keeping this relationship as close as possible overshadows the potential problem that could arise if a distributing plant is ever built at Lewisburg.

*Zones 1 and 2.* With the addition of the new Zone 3, as described above, Zone 2 now consists of 27 counties in central Tennessee and three counties in northwest Arkansas. The price for this zone should be $2.60.

There are two plants in this zone: The Heritage Farms plant in Murfreesboro (Rutherford County) and the Mid-America Dairymen, Inc., butter-powder manufacturing plant in Lewisburg (Marshall County). The Heritage plant now has a $2.605 price under Order 7 and the Lewisburg plant has a $2.52 price under Order 93.

The cooperative coalition proposed a price of $2.60 for these two plants. A $2.60 Class I differential adjusted for location also was proposed for these locations in the recommended decision. Neither Heritage nor Mid-Am excepted to this price, and it is the price adopted in this final decision.

Zone 1 of the Southeast marketing area, as modified in this final decision, includes 21 counties in northern Tennessee and 8 counties in northern Arkansas. There are three plants in this zone: Fleming Companies, Inc., and Purity Dairies, Inc., at Nashville, and Cumberland Creamery at Antioch, Tennessee. The price adopted for this zone is $2.55, which is three cents higher than the level proposed by the cooperative coalition and the Fleming Company.

This zone borders four different marketing areas with five different prices (i.e., $2.77 on its eastern border with Order 11, $2.11 and $2.26 along its northern border with Order 46, $2.39 in the Order 99 marketing area, and $2.55 on its western border with Order 106).

At present, the Fleming Dairy plant is regulated under Order 7 and has a Class I price of $2.53, while the Purity Dairy

plant is regulated under Order 93 and has a Class I price of $2.52. Cumberland Creamery plant is a nonpool plant that makes condensed milk and milk powder.

The cooperative coalition and the Fleming Company both proposed a price of $2.52 for the Nashville area. However, the cooperative coalition proposed $2.605 for Lewisburg and Murfreesboro, while the Fleming Company proposed a price of $2.55 for those locations.

The assistant operations manager for Fleming Dairy, Nashville, Tennessee, testified that their Nashville plant competes with The Kroger Company plant (i.e., Heritage Farms) in Murfreesboro for sales throughout the Southeast. He also indicated that both of these plants, as well as the Purity Dairy plant in Nashville, compete for milk supplies from the same general area in central Kentucky and central Tennessee. The witness explained that because this area is a very high production area, it serves a balancing function for the Southeast. When the milk is not needed for fluid use, it is processed at Dairymen, Inc.'s (i.e, Mid-America Dairymen), butter-powder plant in Lewisburg, Tennessee, the Cumberland Creamery in Antioch, or the Meadow Gold[9] ice cream plant in Nashville.

The Fleming Dairy witness testified that the prices between Nashville and Murfreesboro should be brought into closer alignment because the existing price difference at these locations was causing unrest and discontent among neighboring producers. He suggested a price difference of no more than three cents. The witness also stated that the price at Lewisburg, Tennessee, should be no higher than the Murfreesboro price because, otherwise, producers would have an incentive to deliver their milk to Lewisburg for manufacturing use instead of to a bottling plant for fluid use.

Based on the testimony of the Fleming Dairy witness, the recommended decision put Nashville and Murfreesboro in the same zone with a Class I differential adjusted for location of $2.60. The recommended decision concluded that there was an abundant supply of milk available to handlers in central Tennessee and, for this reason, it was not necessary to increase the price at Murfreesboro relative to Nashville to insure that the Heritage Farms plant in Murfreesboro obtains an adequate supply of milk. It also stated that it would not be appropriate to reduce the Class I price at Murfreesboro to the Nashville level because that would disrupt price alignment with the higher-priced zones south of Tennessee and with the $2.77 price applicable in the adjacent Tennessee Valley marketing area. The recommended decision concluded that to provide a common pricing level between the Nashville and Murfreesboro plants, the Nashville price should be raised to $2.60.

In its exception, Mid-Am stated that the Tennessee Counties of Dickson, Cheatham, Davidson, Wilson, and Smith should be moved from Zone 2 to Zone 1, and the price for Zone 1 should be changed from $2.55 to $2.52. The cooperative argued that putting Nashville in Zone 2, as proposed in the recommended decision, results in price alignment problems with handlers fully regulated under the Louisville-Lexington-Evansville order (Order 46). In support of this position, Mid-Am noted that Louisville, which has a price of $2.11 under Order 46, is 175 miles from Nashville and that, based on a transportation cost of 2.5 cents per 10 miles, the price at Nashville should be no more than 44 cents higher than the Louisville price. It concluded, therefore, that the price at Nashville should stay at $2.52.

Fleming Companies, Inc., and Purity Dairies, Inc., which operate distributing plants in Nashville, also opposed the $2.60 price proposed for Nashville. They contend that a higher price is not needed for Nashville because there is an abundant supply of milk in north central Tennessee. They further stated in their exception that there was no evidence in the record to support a higher price at Nashville; the arguments made by Fleming Dairy at the hearing were in support of a lower price at Murfreesboro, not a higher price at Nashville. They also commented that the recommended decision ''creates a Class I price disadvantage for Nashville handlers in competition with Southern Belle and Flav-O-Rich in the southeast Kentucky portion of the Tennessee Valley market, and with Louisville-Lexington-Evansville handlers.'' They repeated their call for a $2.52 price at Nashville and a $2.55 price at Murfreesboro.

The recommended $2.60 for Nashville was based upon the testimony of the Fleming Dairy witness, who indicated that Fleming Dairy was at a competitive disadvantage in procuring milk with the nearby Heritage Farms Dairy plant at Murfreesboro. In its post-hearing brief, Fleming stated that: ''The supply of milk to the three Nashville-area plants comes from counties in central Kentucky and central Tennessee. Most of the supply comes from Kentucky, and is centered around Barren County which supplies over 10 million pounds per month to these plants * * *. The Kroger Murfreesboro plant, like the two Nashville plants, receives milk supplies from southern Kentucky, centered around Glasgow, in Barren County * * *. By reference to Glasgow, the center of the common production area, transportation to Murfreesboro is only six miles greater than transportation to Nashville * * *. The difference in blend prices payable to Central Kentucky producers for milk delivered at comparable distances to the plants in Nashville and Murfreesboro has caused unrest and discontent between neighboring producers.'' (Brief at 19–20.)

Placing aside any consideration of a procurement problem faced by either Purity or Fleming which would justify a higher Class I price, a $2.60 Class I price at Nashville is too high in relation to the Class I price at Louisville. Based upon the 169-mile distance from Louisville to Nashville, the cost of transporting bulk milk from Louisville to Nashville is approximately 43 cents (i.e., 17×.025). Adding the 43 cents to the $2.11 price at Louisville would result in a price of $2.54.

The recommended decision did not consider the Class I price alignment between Somerset, Kentucky, and Nashville, Tennessee, and between London, Kentucky, and Nashville, Tennessee, because they did not appear to be germane. Somerset and London are northeast of Nashville. Southern Belle operates a distributing plant at Somerset, and Flav-O-Rich operates a distributing plant at London. Both plants are regulated under the Tennessee Valley order. It is 161 miles from Somerset to Nashville and 198 miles from London to Nashville. The Class I price at Somerset and London under the Tennessee Valley order is $2.45. Based on a hauling cost of 2.5 cents per 10 miles, the transportation allowance between Somerset and Nashville should be 43 cents (i.e., 17×.025) and the transportation allowance between London and Nashville should be 48 cents (i.e., 19×.025). Adding these allowances to the $2.45 Class I price at Somerset or London would justify a Class I price at Nashville of between $2.88 and $2.93. This computation would not appear to support the Fleming/Purity argument that a price of $2.60 at Nashville is too high.

The Class I differential adjusted for location at Nashville should be changed from $2.60 to $2.55 by moving the Tennessee counties of Dickson, Cheatham, Davidson, Wilson, and Smith

[9] This plant recently ceased operations.

from Zone 2 to Zone 1. This change will narrow the difference in price between Nashville and Murfreesboro from the present 8 cents to 5 cents. Based on the 43-cent transportation cost between Louisville and Nashville, and the 43-cent transportation cost between Somerset and Nashville, this modest 3-cent price increase at Nashville should pose no Class I price alignment problem for Nashville-area plants. It will have the beneficial effect of increasing slightly the uniform price at Nashville in relation to Louisville, Somerset, London, and Murfreesboro, which may help Nashville-area handlers retain their milk supplies from central Kentucky.

No change should be made in the Class I price at Murfreesboro. It should remain in Zone 2 with a Class I differential adjusted for location of $2.60.

*Location adjustments for plants outside of the marketing area.* Location adjustments also must be specified for plants that are located outside of the Southeast marketing area.

There are seven counties in northern Georgia that are within the Tennessee Valley marketing area. There are no known dairy plants in these counties. Under the Tennessee Valley order, which has no location adjustments within the marketing area, the Class I price in those counties is $2.77. Had those counties been incorporated in the proposed Southeast order, they would have been included in Zone 5, which has an adjusted Class I differential price of $2.83. Therefore, the location adjustment in those counties under this order, as provided in § 1007.52(a)(2), should be minus 25 cents.

The Missouri county of Dunklin is now unregulated, and Pemiscot County, Missouri, is within the Paducah, Kentucky, marketing area. Had these two counties been included within the Southeast marketing area, they would have been included in Zone 1. Therefore, the appropriate location adjustment for any plant that may be located in these two counties is minus 53 cents, as provided in § 1007.52(a)(3).

Had the Texas counties of Bowie and Cass been incorporated within the Southeast marketing area, they would have fallen within Zone 7, the base zone. Although there are no plants in these two counties at the present time, the applicable location adjustment in those two counties should be zero, as provided in § 1007.52(a)(4).

Should a plant located within another Federal order marketing area become regulated under the proposed Southeast order, or should producer milk be diverted to a plant located in another Federal order marketing area, the appropriate location adjustment at that plant location should be based on the Class I differential adjusted at the location under the Federal order regulating that area, except for the seven Georgia counties within the Tennessee Valley marketing area and the Missouri county of Pemiscot. Thus, for example, if a plant located in Louisville, Kentucky, were to become regulated under the Southeast order, the location adjustment at that plant would be determined by subtracting the Class I price under the Louisville-Lexington-Evansville order at the Louisville location (i.e., $2.11) from the base zone Class I differential price under the Southeast order (i.e., $3.08), which would result in a location adjustment of minus 97 cents. This treatment is provided in § 1007.52(a)(5) of the Southeast order.

The final situation that must be dealt with concerns a plant that is not located within any other Federal order marketing area. Section 1007.52(a)(6) of the proposed order provides six basing points (i.e., Shreveport, Louisiana; Little Rock, Arkansas; Memphis, Tennessee; Jackson, Tennessee; Nashville, Tennessee; and Atlanta, Georgia) in the Southeast marketing area from which to determine the shortest hard-surfaced highway distance to the plant location as determined by the market administrator. The location adjustment would be determined by multiplying each 10-mile increment or fraction thereof by 2.5 cents and subtracting this number from the Class I differential price adjusted for location at the closest of the six basing points. To illustrate, should a plant in Richmond, Virginia, which is 511 miles from Atlanta, become regulated under the Southeast order, the location adjustment would be 52 x $.025 or minus $1.30. In the case of a plant located in Chillicothe, Missouri, the location adjustment would be computed by determining the mileage (i.e., 424 miles) from the closest basing point (i.e., Little Rock), multiplying 43 times $.025, and subtracting that number ($1.08) from the location adjustment at Little Rock (i.e., minus 25 cents) to arrive at a location adjustment at Chillicothe of minus $1.33. This method will provide a reasonable transportation allowance to ship bulk milk from a distant location to the Southeast marketing area, while simultaneously providing a price that is reasonably aligned with other Federal order prices closer to the plant location.

*2(d). Payments to Producers.* On or before the 26th day of each month, each handler under the proposed order should pay for milk received from producers during the first 15 days of the month. The rate of payment for this milk should be the higher of the Class III price for the preceding month or 90 percent of the preceding month's weighted average price.

On or before the 15th day of each month, a handler would make a final payment to producers for milk received during the preceding month. The rate of payment would be based on the uniform price(s) that will have been announced by the market administrator on or before the 11th day of the month. The final payment would be net of the partial payment made on the 26th day of the prior month, and will also be adjusted for marketing services deductions pursuant to § 1007.86, errors, and other deductions authorized in writing by the producer.

If a handler has received milk from a producer who is marketing his or her milk through a cooperative association, the handler would pay the cooperative association for this milk, not the individual producer. The partial payment would be made to the cooperative on or before the 25th day of the month, and the final payment would be made on or before the 14th day of the month. In this way, the cooperative would, in turn, be able to pay its producers on the same day that handlers pay their nonmember producers.

These provisions and the remaining paragraphs in § 1007.73, are identical to the provisions proposed by the cooperative coalition.

The proposed partial payment date is somewhat earlier than the date that is provided in the individual orders—i.e., the last day of the month—but there was no testimony to indicate why an earlier date would not be possible or any apparent reason why the earlier payment date would not work.

These payment provisions are common to all of the individual orders and should be familiar to all handlers regulated under the merged order.

*A second partial payment to producers.* A proposal that would establish two partial payments and a final payment to producers should not be adopted.

Georgia Milk Producers, Inc. (GMP), an organization which represents approximately 195 dairy farmers located in the State of Georgia, proposed a provision that would require handlers to pay producers two partial payments and a final payment. The proposal specifies that on or before the 20th day of each month, producers would be paid for milk received during the first 15 days of the month at the rate of 85 percent of the weighted average price per hundredweight for the preceding month; on or before the 5th day of the

following month, producers would receive another payment, based on this rate, for milk received from the 16th through the last day of the month; and, finally, on or before the 15th day of each month, the producer would receive final payment for milk received during the preceding month based on the uniform price(s) for the month.

An agricultural economist at the University of Georgia testified on behalf of GMP, Georgia Farm Bureau Federation (GFBF), Alabama Farmers Federation (AFF), Louisiana Farm Bureau (LFB), and the Mississippi Farm Bureau Federation (MFBF) in support of the three-payment proposal.

According to the witness, milk is one of the few agricultural commodities produced in which the producer supports or actually finances the marketing of the product. He stated that most agricultural commodities are paid for at or soon after delivery to the first buyer. He claimed that the dairy farmer finances not only the production of his or her milk, but also the marketing of the milk produced through each of the marketing channels including the retail store.

The witness argued that the financial risk to producers has increased in recent years. He noted, for example, that from 1982 to 1992, the number of producers delivering milk to regulated handlers under Orders 7, 93, 94, 96, and 98, decreased from 5,765 to 4,600 but that the average monthly volume of milk produced increased by 10,000 pounds. He also pointed out that the number of pool distributing plants decreased from 75 to 41 from 1982 to 1992. Thus, he reasoned, there is now a greater financial obligation per plant and a greater financial risk per producer.

The witness testified that the three-payment plan would decrease the financial burden on producers and reduce the risk of nonpayment. By reducing by one-third the time between milk delivery by the producer and the payment for the milk by the handler, he claimed, the financial exposure to producers resulting from a late handler payment or handler bankruptcy would also be reduced by about one-third.

The witness emphasized that dairy farmers do not have the debt protection and the type of provisions included in both the Packers and Stockyard Act and the Perishable Agricultural Commodities Act. He noted that the Agricultural Marketing Act of 1937 authorizes the Secretary of Agriculture to administer milk marketing orders so as to provide for ''assurance and security for, the payment by handlers for milk purchased.'' However, he stated, there are no Federal milk orders that include payment security provisions.

A dairy farmer testifying on behalf of the Alabama Farmers Federation Dairy Committee in support of the three-payment plan stated that the plan is an opportunity to begin correcting a problem that exists between the time a farmer delivers milk to a handler and the time he is paid. He testified that this problem needs to be addressed nationwide but stated that this regional hearing is an excellent place to begin.

A dairy farmer located in Loudon, Tennessee, who is also in the milk hauling business, also testified in support of the three-payment plan. He stated that over the years changes in the dairy industry have limited the selling and marketing options of dairy farmers. He said that there are agreements in place to control producer movement between processors and cooperatives. He also stated that the times of year when producers can change markets economically are limited because of base-excess plans, pooling requirements, and cooperative procurement needs. Additionally, he claimed that producers have limited access to accurate financial information of handlers.

According to this witness, bankruptcy is no longer an act of last resort; it is considered a standard business procedure that is often a pre-meditated planned event. He stated that dairy farmers should not carry the risk after the milk leaves the farm when they do not reap the benefits or losses from that product. He also stated that producers should be paid three times per month because the technology is now available to do it.

A dairy farmer who is the president of Georgia Milk Producers, Inc., testified that the three-payment plan would provide much needed protection against the risk of dairymen losing money when handlers go bankrupt and it would improve producers' cash flow. Finally, a dairy farmer located in Barnesville, Georgia, testified that the three-payment plan was needed because the credit situation for producers has changed over the past 10 years. He claimed that producers have limited selling options.

The vice president of the International Dairy Foods Association (IDFA) testified in opposition to the three-payment plan. IDFA is comprised of Milk Industry Foundation (MIF), the national trade association for processors of fluid milk and milk products, the National Cheese Institute (NCI), the national trade association for manufacturers, processors and marketers of all varieties of cheese, and the International Ice Cream Association (IICA), the national trade association for manufacturers of frozen dessert products. According to the witness, the member companies of the three associations in total utilize over 80 percent of all the raw milk produced in the United States to process milk and manufacture cheese and frozen dessert products which they market.

The IDFA witness pointed out that provisions for three times a month payments to producers are not in effect in any of the milk marketing orders involved in the hearing or in any other milk marketing orders, with the exception of three Florida orders. He said the three-payment plan in the Florida markets pre-dated the establishment of the orders and was based on prevailing market conditions that were mutually agreed upon by producers and handlers in those areas at that time.

The witness cited several decisions in which the Department denied proposals to establish thrice-monthly payments to producers. He said the proposal would lead to unstable marketing conditions throughout the southern region and would create a competitive disadvantage for both producers and handlers in the merged order because of the increased cost of raw milk. He also argued that thrice-monthly payments would clearly increase costs to handlers and severely impact their cash flow and cash reserve positions. He claimed that handlers, and ultimately consumers, would have to pay an additional 2.6 cents per hundredweight due to the accelerated payment.

The witness stated that there is no evidence which indicates producers in this region have suffered financial hardships as a result of the prevailing payment schedules in these orders. In fact, he stated, the financial situation for producers in this area, as well as most areas of the country, has improved over the past few years, indicating no need to change the payment schedule. He noted that from 1987 through 1990 the ratio of current farm business assets to current farm business liabilities for milk producers in the southeastern region has more than tripled from 1.37 to 4.78.

The IDFA witness indicated that dairy processors also must wait to be paid for their products. Information from IDFA member companies, he said, indicates that handlers' outstanding accounts receivable generally run from 25 to 40 days on most commercial accounts, and accounts receivable on sales to schools and state institutions run longer, generally from 60 to 90 days from billing to collection.

Southern Foods Group and Kraft General Foods (Kraft) supported the opposition testimony of IDFA. The

procurement manager for Kraft testified that Kraft's accounts receivables averaged 17.3 days in 1993, which does not include the inventory age of the product. He also said that, based on Kraft's own receivables and payable schedules and other information, it is customary for those in the industry to extend 20 to 25 days credit on their accounts receivables.

Representatives of Kinnett Dairies, Inc. (Kinnett), and The Kroger Company (Kroger), proprietary handlers regulated under Order 7, also testified in opposition to the thrice-monthly payment plan proposal. The Kinnett witness stated that the plan would give handlers regulated under other orders a competitive advantage, and the Kroger representative claimed that the proposal would significantly reduce the cash flow of dairy processors, adversely affecting the dairy industry. According to the Kroger witness, reducing the cash flow for processors would reduce the amount of money available for research and development of new products which helps to maintain and expand the market for dairy farmers' milk.

The University of Georgia agricultural economist and the other proponent witnesses testified that the thrice-monthly payment plan would reduce the financial risk that dairy farmers face from handler bankruptcy. Although the record evidence reveals that bankruptcy is a problem in the marketing area involved, the proposal is not one that guarantees producers protection against financial loss from handlers who declare bankruptcy.

One of the advantages that members of a cooperative association have in bankruptcy situations is that the financial loss is shared equally among all producers and not borne by one producer alone. Perhaps for this reason, there was little concern expressed about this issue at the hearing by cooperative association representatives or their member producers.

While proponents of the thrice-monthly payment plan argued that the plan would enhance their cash flow, the record does not reveal that producers are experiencing financial problems as a result of receiving one partial and a final payment each month. Although the record does indicate that at least one dairy farmer pays for feed on a cash-on-delivery basis and is assessed a penalty for late payment, there is no indication that a large number of producers are buying production items on this basis.

Adoption of this proposal would place handlers regulated under the merged order at a competitive disadvantage with unregulated handlers and handlers regulated under other orders. It must be concluded that the extra costs associated with the implementation of this plan exceed the benefits to producers.

The Agricultural Marketing Agreement Act of 1937 authorizes the setting of payment dates under an order but it does not specify how frequently handlers must pay producers. Customarily, this is established on the basis of prevailing marketing conditions, including payment practices already existing in an area or new payment practices that handlers and producers may find mutually desirable. Producers and handlers should continue to have the option of negotiating payment schedules, including an additional partial payment if mutually desired. However, this practice should not be institutionalized by being incorporated in the merged order.

*Producer Assurance Fund.* A proposal to establish a producer security fund under the merged order should not be adopted.

A second professor and agricultural economist at the University of Georgia, presented a proposal on behalf of some Georgia dairy farmers, the Alabama Farmers Federation, and the Louisiana Farm Bureau which provides for the establishment of a producer assurance fund (PAF). He claimed that the PAF would reduce the financial risk of producers in bankruptcy cases.

The witness testified that paragraph 5(E) of Section 8c(2) of the Agricultural Marketing Act of 1937, as amended, provides for the inclusion of provisions for the ''assurance of, and security for, payment by handlers for milk purchased.'' He stated that the market administrator could administer the PAF at no additional charge, explaining that processors regulated under the merged order would be assessed two cents per hundredweight until the fund was fully endowed. He said that the market administrator would review the fund annually to determine if adjustments should be made.

The witness stated that operating cooperatives and chain stores would be exempt from the fund and that, if the order is terminated, processors who contributed to the fund would be reimbursed a pro rata amount. While noting that the best approach would be to implement this fund on a national level, he said that the next best alternative is to initiate it on a regional basis.

The chairman of the Alabama Farmers Federation Committee (AFFC) and a Barnesville, Georgia, dairy farmer also testified in support of the producer assurance fund. While observing that the fund would not protect producers from all loss, the AFFC representative said that it was a step in the right direction. The Georgia dairy farmer related his experience in a bankruptcy two years ago which resulted in a financial loss of about 21 days' of production.

The witness for the IDFA testified that the members of the IDFA were opposed to the establishment of a producer assurance fund. He said that such a provision has never existed under Federal milk orders and questioned whether the Federal order program was the appropriate vehicle to implement this type of fund.

The IDFA witness stated that processors and manufacturers assume a significant risk in receiving a steady supply of raw milk, even as demand fluctuates throughout the year and does not always keep up with supply. He claimed that most of the businesses within the United States, including dairy processors, do not have any protective regulations and/or funds which guarantee payment on products sold. He argued that establishment of a PAF would limit processors in conducting business and will negatively impact producers in the long run.

In its post-hearing brief, IDFA claimed that establishment of the fund would result in a costly duplication of regulations that have already been promulgated by some States in the Southeast. In addition, IDFA claimed that the expense of the fund would place handlers at a competitive disadvantage vis-a-vis unregulated handlers or handlers regulated under other orders.

Representatives of Kraft General Foods, Kinnett Dairy, and The Kroger Company also testified in opposition to implementing a PAF. In their post-hearing briefs, Southern Foods Group, Barber Pure Milk Company, Dairy Fresh Corporation, and Baker & Sons Dairy, Inc., also indicated their opposition to this proposal.

The PAF proposed for the merged order would place handlers regulated under the order at a competitive disadvantage compared to handlers regulated elsewhere. Those handlers who operate cost efficient businesses should not be required to pay the debts of insolvent handlers whose businesses were poorly managed.

The record evidence does not reveal why a fund which protects producers against bankruptcy should be financed solely by handlers. In fact, the record shows that the proposal lacked support from a substantial number of producers, many of whom are protected from loss by belonging to a cooperative association, which obviously is better

equipped to withstand a handler bankruptcy than a single producer.

While a producer assurance fund may have some merit, the concept should be more fully researched and explored. One question that should be answered is whether such a fund should be implemented on a local, regional, or national basis. Another question that should be addressed is whether handlers should bear the sole responsibility of supporting the fund, or whether producers also should be required to contribute to it.

Due to the lack of information on the effects of a PAF on producers and handlers under the proposed order, the overwhelming opposition to it by handlers in this market, and the lack of producer support exhibited at both the hearing and in briefs, the proposal should not be adopted.

*Base-excess plan: §§ 1007.90–1007.94.* A base-excess plan should be adopted for the merged order. The plan adopted in this final decision is significantly different than the one proposed in the recommended decision.

*Need For a Base-Excess Plan.* The cooperative coalition's spokesman testified that a base-excess plan would provide an incentive to producers to balance their milk production throughout the year. He noted that a base-excess plan is provided in the Georgia (Order 7), Alabama-West Florida (Order 93), and the former Nashville (Order 98) orders.

There was widespread support at the hearing and in post-hearing briefs for a base-excess plan. Representatives of the Southern Foods Group, Inc., Fleming Dairy, the Louisiana Farm Bureau Federation, Georgia Milk Producers, Inc., and Arkansas Dairy Cooperative Association testified in support of the plan. Several individual dairy farmers also spoke in support of the plan.

A dairy farmer who testified on behalf of some of the producers supplying Fleming Dairy in Nashville stated that a base-excess plan will encourage more milk production during seasonally low production months and discourage milk production during the flush production months. In the past, he said, dairy cooperatives have unsuccessfully built manufacturing plants to help balance raw milk production to the demand of the Class I market. He claimed that dairy producers are the only ones able to solve the raw milk balancing problem by leveling out their milk production.

The witness and other dairy farmers who testified on this issue indicated that much could be done by dairy farmers to balance their seasonal swings in production. Some of the plans have not been effective in the past, they said, because they were not implemented on a regional basis and because some cooperatives did not pay their producers a base and excess price.

Opposition to a base-excess plan was expressed by Gold Star Dairy, which indicated that the plan would limit Gold Star's flexibility in obtaining supplemental supplies during the operative months of the plan. The spokesman for AMPI also indicated opposition to a base-excess plan for AMPI's proposed Mid-South order but supported the cooperative coalition's proposal to include a base-excess plan in their proposed Gulf States order. He stated that the plan would build a fence around the marketing area and impede the efficient movement of supplemental milk to the market during periods of increased demand or reduced production.

In their exceptions to the recommended decision, Gold Star Dairy and AMPI maintain that Mid-Am, the dominant cooperative in the Southeast marketing area, will not pay its producers base and excess prices. They stated that, historically, base-excess plans have been used to impede the movement of producers from one market to another and are not necessary to advance the provisions of the Act. AMPI emphasized that the plan will be ''especially onerous—and act as an exclusionary barrier—to the flexible and efficient marketing capability of cooperatives whose producers are located to the southwest, west and north of the proposed Southeast marketing area.''

The Agricultural Marketing Agreement Act states that milk orders may contain provisions ''to encourage seasonal adjustments in the production of milk * * * on the basis of their [producers] marketings of milk during a representative period of time * * *.'' While the performance of the base-excess plans in Orders 7, 93, 98, and 108 in leveling out production is subject to some debate, particularly because several of the cooperatives in these markets have not been paying their producers base and excess prices, there is no doubt that the overwhelming sentiment of producers, as expressed in the record of this hearing, is that a base-excess plan be incorporated in the merged order. Absent any sound reason for denying this request, the proposal should be adopted. However, it is time-consuming and costly for the market administrator to administer a base-excess plan. If the plan is not used under the merged order to pay producers, it cannot be effective for the intended purpose of leveling out production. Absent a demonstration of use of the plan in paying producers, further consideration should be given to whether the plan is necessary. This decision is written, however, on the basis of the testimony, evidence, and comments on the record of this hearing which demonstrate that the plan is desired, needed, and will be used to pay producers.

Under the base plan adopted in this final decision, a producer can earn a base by shipping as little as one day's production to the Southeast market during the months of July through December. Of course, such a base will be very small, but the point to be emphasized is that those who argued that the base plan would inhibit the movement of milk on and off the market will have the flexibility to shift milk between plants as conditions may require. The base plan, as modified, should serve its purpose of encouraging producers to level their seasonal production pattern but, at the same time, not be a barrier to the movement of milk on and off the market.

*Base-Forming and Base-Paying Months:* There was considerable disagreement concerning the months to be used for the base-forming and base-paying periods. As contained in the cooperative coalition's proposal, bases would be computed based upon production during the months of September through December (i.e., the ''base-forming period''), and base and excess prices would be paid during the following months of February through May.

The witness for Fleming Dairy stated that the base-forming period should consist of the months of July through November and that producers should be paid base and excess prices during the months of January through May. He noted that statistics for the five-market region indicate that the Class I utilization exceeded 80% only during the months of July through November from 1990 through 1993. For the same three-year period, he pointed out, the percentage of milk utilized in Class III manufactured products for the five-market region was the lowest during July through October. He also indicated that Fleming had experienced problems in trying to encourage producers to increase milk production during the months of July and August and that these two months should, therefore, be part of the base-forming period.

Two dairy farmers supplying Fleming Dairy agreed that the base-forming period should be the months of July through November and that the base-paying months should be January through May. Their testimony indicated that cows and heifers that calve in late

August or September will peak in milk production in November, December, and January, which are not the months in which additional milk production is needed.

One of the dairy farmer witnesses explained that ''cull'' cows or ''turn'' cows dry early in the spring. He stated that this option is available to each dairy producer whose milk production gets out of cycle. Thus, he proposed that the merged order be structured to discourage milk production during those months when milk is typically in over-supply by paying producers a base and excess price during the months of January through May.

The other dairy farmer witness noted that over the past several years many county school systems in the South have moved their fall start-up date from September until about the third week of August, which caused the demand created by school start-ups to be moved up two weeks. He claimed that including the month of July in the base-forming period will send the correct signal to producers as to when more milk is needed.

The chairman of the Dairy Advisory Committee of the Louisiana Farm Bureau Federation (LFBF) testified that the months of March through June should be the base-paying period. He stated that these are the months of highest production in relation to Class I needs.

The witness also stated that producers currently regulated under Orders 94 and 96, which do not now have a base-excess plan, would be placed at a greater disadvantage if the base-forming period began with the month of July or August instead of September because production was down in those months due to the midsummer heat in Louisiana.

In its post-hearing brief, Georgia Milk Producers, Inc. (GMP), recommended that the base-forming period be the months of September through January. According to GMP's brief, adding the month of January as a base-forming month would provide a period where weather conditions are more indicative of the norm. Additionally, GMP suggested extending the base-paying period to include the month of July, claiming that the extension would allow producers who have met the needs of the market by equalizing their production in the fall and summer to receive payment for base milk for an additional month.

Summarizing the hearing proposals and testimony, the base-forming period would be September–December (cooperative coalition, LFBF), July–November (Fleming Dairy and two dairy farmers), or September–January (GMP), while the base-paying period would be February–May (cooperative coalition), January–May (Fleming Dairy and two dairy farmers), March–June (LFBF), or February–July (GMP).

The appropriate base-paying period for this market is February through May. These are clearly the months when additional milk is not, in fact, needed. July, August, and December should clearly not be base-paying months because supplemental milk supplies may very well be needed during those months. June and January are borderline months. During the past three years, the average Class I utilization was 72.3 percent in January and 73.3 percent in June, both of which are above the comparable percentages for the months of February through May: i.e., 69.5, 68.4, 67.5, and 70.8 percent, respectively. Based on this data and analysis, the testimony and the comments received, the cooperative coalition's proposed February–May base-paying period was proposed in the recommended decision and is adopted in this final decision.

With respect to the base-forming period, the recommended decision concluded that the needs of the market's producers would be met by using the months of September, October, and November. However, many comments were received opposing these months because they were too restrictive. Accordingly, this final decision is modified to meet the needs of all producers by expanding the base-forming months to July through December. However, only each producer's highest four production months will be used to determine each producer's base.

In their exceptions to the recommended decision, Mid-America, Southern Milk Sales, the Louisiana Farm Bureau Federation, the Mississippi Farm Bureau Federation, and many dairy farmers again stated their support for the months of September through December. Mid-America and Southern Milk Sales argued that the merged order should include a four-month base-forming period of September through December because a shorter period would be unfair to all producers whose milk will be pooled under the order. They maintain that the four months of September through December would balance the desires of producers in both the northern and southern areas of the proposed marketing area.

The Georgia Milk Producers Association (GMP), Alabama Dairy Producers, and several dairy farmers reiterated their support for the months of September through January as the base-forming period. These commentors argued that the recommended September through November base-forming period would place producers located in the southern part of the marketing area at a disadvantage compared to producers located in the northern area due to the summer heat. GMP contends that the lingering effects of the hot summer weather on cows as well as the warm temperatures of late summer and early fall prevent cows from reaching their peak production until the late fall.

Fleming Dairies reiterated its support for the inclusion of the months of July and August in the base-forming period. Fleming argued that while the average producer will find it easier to establish a ''production benchmark'' during the fall months, establishing a base-forming period to provide ease to producers in building a base is not a goal of a base-excess plan. It emphasized that the objective of a base-excess plan is to ''encourage more even production of milk throughout the year.'' By excluding the shortest milk production months of July and August from the base-forming period, Fleming contends that a major objective of the statutory seasonal incentive authority would be abandoned. It urged that this error be corrected in the final decision.

As a result of the comments received, the recommended base-forming period of September through November should be expanded to the months of July through December. However, instead of using every month of this six-month period to determine a producer's base, only the highest four production months should be used. This four-month period will better accomplish the goal of establishing the production benchmark, and it will allow all of the market's producers to compete on equally favorable conditions.

As noted above, Fleming claims that July and August should be base-forming months because these months are low production months when milk is often in short supply. On the other hand, many of the market's producers would also like to see the months of December and January included in the base-forming period because they are accustomed to these months under their present base plans and the inclusion of these months would boost their daily average production.

The primary reason for initially excluding the months of July, August, December, and January from the base-forming period was because these months would be difficult months for some dairy farmers. However, the modified base-forming period provides producers with much more flexibility.

While the inclusion of December may help producers in the southern-most part of the market, the inclusion of July and August, in conjunction with the use of the four highest daily average production months, should result in a balanced plan that is fair to all of the market's producers.

The month of January was not included in the base-forming period because its inclusion would make it impossible for the market administrator to determine a producer's base in time for the producer to transfer that base with certain knowledge of what the base actually is. Under § 1007.93(a) of the base rules, in order for a transferred base to be effective at the beginning of the February 1 base-paying period it must be transferred by February 15. However, if January had been included in the base-forming period, the market administrator would not have had the information to compute a base until near the end of February. With the July-December base-forming period adopted in this decision, the market administrator will have the time to compute and announce bases by January 31 so that orderly transfers may take place prior to, or close to, the outset of the base-paying period. As a result, producers will not be placed in the position of having to ship their milk for an entire month without knowing with certainty what their base was. By having the information available at the outset of the base-paying period, producers will be in a better position to make informed and timely management decisions.

Under the plan adopted in this final decision, to qualify for a base, a dairy farmer must be a ''producer'' under the Southeast order during one or more of the months of July through December. To determine each producer's average daily production during the base-forming months, the market administrator will divide the producer's total pounds of producer milk delivered to pool plants or diverted to nonpool plants by the number of days in the month. The sum of the four highest daily averages so computed will then be added together and divided by four to determine the producer's daily average base. If a producer was on the market for less than four months, a zero will be substituted for each month in which no producer deliveries were made. Unless the producer qualifies under the hardship provisions described below, the divisor in this base computation will always be four.

Under the present base plan provisions and those proposed by the cooperative coalition, accommodation is made for a producer who experienced a substantial reduction in production as a result of a catastrophe, certain diseases, or a quarantine. Since only the four highest months of production out of a total of six months will be used to determine base under the base-excess plan adopted in this decision, it is less likely that this provision will be needed. Nevertheless, such a provision is provided in § 1007.92(c) to accommodate those situations when a producer's production is severely disrupted by fire, storm, or other natural disaster, by brucellosis, bovine tuberculosis, or other infectious diseases, or by a Federal or State quarantine of a producer's farm. In the unlikely event that a disruption in production caused by one or more of these conditions leaves a dairy farmer without four complete months of production from which to compute a base, the dairy farmer may request a base computation based on a lessor number of months by submitting to the market administrator in writing on or before February 1 a statement that establishes to the satisfaction of the market administrator that during four or more of the months in the immediately preceding July through December base-forming period the amount of milk produced on such producer's farm was substantially reduced because of one or more of the conditions described in § 1007.92(c).

In addition to discussing the conditions specifically included in § 1007.92(c), the recommended decision's findings and conclusions referred to a ''temporary loss of market when cut off by a buying handler.'' The implication of this language, which emanated from the testimony of the cooperative coalition's spokesman but which was not in the proposed rules of the coalition, was not explored.

Under the base plan provisions adopted in this decision, order language of this nature is unnecessary because a producer can have a ''temporary'' loss of market for as long as two months and still be eligible for a full base by at least qualifying as a producer for the remaining four months of the base-building period. Accordingly, no specific accommodation has to be made for a producer who is temporarily off the market for this reason.

Producers who do not qualify for a base because they delivered milk to a nonpool plant that became a pool plant after the beginning of the base-forming period should be assigned bases under the order. Such bases should be calculated as if the nonpool plant had been a pool plant during the entire base-forming period. A base assigned in this manner also would not be transferable.

*Transfer Rules:* A base earned by a producer may be transferred. Transferability is an appropriate provision to include in the plan because a base is something of value that has been earned, and the base-holder or his/her heirs should be compensated for that value when the base-holder dies or when the farm of a base holder is sold. For ease in administering this provision, the amount of base transferable should either be its entirety or in amounts not less than 300-pounds.

A base transfer will be effective on the first day of the month following the date on which an application signed by the base holder or his/her heirs is received by the market administrator. However, base transfers to be effective on February 1 must be received by the market administrator no later than February 15. Although the cooperative coalition also specified that the person receiving the base should be required to sign the transfer application, this requirement has not been adopted. There is no apparent reason why the recipient of a base should be required to sign the application, and this particular requirement merely adds unnecessary expense to the administration of the base plan provisions. If a base is held jointly, the application for transfer should be signed by all joint holders or their heirs to insure that there is no misunderstanding between the parties involved in the transfer.

A base established by a partnership may be divided between partners on any basis agreed on in writing by them as long as written notification of the agreed-upon division, signed by each partner, is received by the market administrator prior to the first day of the month in which the division is to be effective.

To insure that the exchange of bases between producers are bona fide transfers, a producer who transferred all or part of his/her base on or after February 1 should not be permitted to receive other base by transfer that would be applicable within the February–May period of the same year. In addition, a producer who received base by transfer on or after February 1 should not be permitted to transfer a portion of that base to be applicable within the February–May period of the same year, but should be permitted to transfer the entire base.

Inclusion of a base-excess plan under the merged order will require the computation of a uniform price during the non-base-paying months of June through January and uniform prices for base and excess milk during the other months of the year. The steps to be

followed in computing these prices are contained in § 1007.61.

One change should be made in the computation of the uniform price for excess milk. As now in Orders 7 and 93 and as proposed by the cooperative coalition in § 1007.61(b)(1), the uniform price for excess milk would be computed by multiplying the pounds of excess milk that do not exceed the pounds of milk assigned to Class III by the Class III price, any remaining excess pounds by the Class II price, and, if there are excess pounds remaining, by the Class I price. The total value so computed then would be divided by the total pounds of excess milk to arrive at the uniform price for excess milk.

This procedure should be modified slightly to reflect the incorporation of Class III–A pricing in the order. Specifically, a new step should be added—i.e., § 1007.61(b)(1)(i)—that would first multiply the pounds of excess milk that do not exceed the pounds of milk assigned to Class III–A by the Class III–A price. The remaining excess pounds would then be multiplied by the Class III price, the Class II price, and finally, if there are any excess pounds left, by the Class I price.

Without this modification, any milk that was assigned to Class III–A would reduce the uniform price for base milk, instead of the uniform price for excess milk. This would narrow the difference between the two prices, thereby reducing the incentive for producers to level out their production, which is the primary purpose of the base-excess plan.

Sections 1007.92, 1007.93, and 1007.94 have been modified to reflect the changes in the base-forming months, in the computation of a producer's base, and the base rules.

*2(e). Administrative Provisions.* The administrative duties of the market administrator are detailed under § 1000.3 of the General Provisions, which pertain to all milk orders. In § 1000.5 of the General Provisions, a handler's responsibility for records and facilities are also detailed.

*Handler Reports.* The responsibility of handlers to establish and maintain certain records of their operations and to make such records and facilities available to the market administrator are set forth in § 1000.5 of the General Provisions. That section relates to the adequacy of the records of the handler and the period of time for which they should be maintained.

The requirements of handlers to maintain such records, and to make reports of receipts and utilization to the market administrator under §§ 1007.30, 1007.31, and 1007.32 of the proposed order, are similar to the requirements that are now contained in the five orders to be merged.

To compute the uniform price and the prices for base and excess milk, the market administrator must first receive a report of receipts and utilization from each of the handlers in the pool. Section 30 of the order describes who should file a report of receipts and utilization, what the report should contain, and when it should be filed. As proposed and adopted here, this report would have to be filed on or before the 5th day after the end of the month, or not later than the 7th day if the report is delivered in person to the office of the market administrator. This filing deadline will provide the market administrator with sufficient time to receive the reports, review and correct them for obvious errors, compute each handler's value of milk at classified prices, compute the uniform price or prices, and announce such price or prices by the 11th day of each month.

Section 31 of the proposed order discusses the submission of handler payroll reports. This report shows the name and address of each producer, the total pounds of milk received from the producer, the butterfat content of the milk, and the price per hundredweight paid. This report is due on or before the 20th day after the end of the month.

Section 32 deals with the reporting of base milk for the months of February through May and any other reports which the market administrator may request. The aggregate quantity of base milk received from producers must be reported on or before the 7th day after the end of the month, while the pounds of base and excess milk received from each producer must be reported on or before the 20th day after the end of each month of February through May.

The dates proposed for the filing of reports, price announcements, and payments were patterned after those in the Alabama-West Florida order. They are similar, however, to those provided in other Federal orders in the Southeast. Therefore, handlers under the proposed Southeast order will be accustomed to meeting these deadlines. Likewise, producers covered by this order will receive their payments at about the same time as they have received payments under the current Federal orders.

*Charge for Overdue Accounts.* It is essential to the effective operation of the proposed order that handlers make their payments on time.

Under a marketwide pooling arrangement, handlers with Class I utilizations higher than the market average pay part of their total use value of milk to the producer-settlement fund. This money is, in turn, paid out to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use their milk, can pay their producers the same uniform price. The success of this arrangement depends upon the solvency of the producer-settlement fund.

The prompt payment of funds due the administrative and marketing service funds is also essential for the market administrator to perform the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out these duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay late are, in effect, borrowing money from producers. In the absence of any late-payment charge equal to at least the cost of borrowing money from commercial sources, handlers who are delinquent in their payments would have a financial advantage relative to those handlers making timely payments.

The late-payment charges included in the proposed order are not a substitute for prompt payments by handlers; those handlers delinquent in their obligations would still be subject to legal enforcement action as authorized under the Act.

Under the late payment provisions, overdue handler obligations would be increased by 1.5 percent on the day after the due date. Any remaining unpaid portion of the original obligation would be increased by 1.5 percent on the same date of each succeeding month until the obligation is paid.

The late payment charge should apply not only to the original obligation but also to any unpaid charges previously assessed. They would apply whether the obligation is paid one day late or ten days late, and would be applicable to both fully regulated and partially regulated handlers alike.

The disposition of the late payment charge would be determined by the account to which it is due. A charge resulting from an unpaid obligation to the producer-settlement fund would go into that fund. By the same token, a charge resulting from an unpaid obligation for order administration or marketing services would go into those respective funds.

The proposed rate of 1.5 percent per month is reasonable and is not less than the current annual rate for short-term loans.

*Expenses of Administration.* The expenses for the administration of the

proposed order should be borne by regulated handlers under the order.

Section 1007.85 provides that each handler shall pay to the market administrator his/her pro rata share of the expenses of administration of the order. Accordingly, on or before the 15th day after the end of the month, each handler will be required to pay the market administrator five cents per hundredweight, or such lesser amount as the Secretary may determine is necessary, with respect to receipts of producer milk, including such handler's own production, but excluding receipts from a cooperative association acting as a handler for milk delivered to pool plants of other handlers. The payment shall also apply to other source milk allocated to Class I and to route disposition in the marketing area by partially regulated distributing plants.

To administer the order properly, the market administrator must have sufficient funds to cover his costs. The Act specifically states that such cost of administration shall be borne by handlers through an assessment on such handlers.

A principal function of the market administrator's office is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved by applying the administrative assessment on the basis of milk received from dairy farmers as well as on other source milk allocated to Class I.

The proposed order provides that a cooperative shall be the handler for its member milk which it delivers in tank trucks from the farm to pool plants of other handlers. The cooperative is the handler for such milk basically for the purpose of accounting to its individual member producers.

The milk is producer milk at the plant of the receiving handler and is treated the same as any other direct receipt from producers. Therefore, the pool plant operator who receives the milk should pay the administrative assessment on such milk. The cooperative, however, would be liable for the administrative assessment for any amount by which the farm weights of the producer milk exceeds the weights at the plant on which the plant operator purchased the milk from the cooperative.

The market administrator must verify, by audit, the receipts and utilization of pool plants whether the plant operator buys milk directly from producers or through a cooperative association as a handler. It is appropriate, therefore, that the pool plant operator receiving such milk should pay the administrative assessment on the milk on the same basis as all other producer milk received at the plant.

In the case of unregulated milk entering the market through a regulated plant for Class I use, the regulated handler who utilizes the unregulated milk must report to the market administrator the receipts and use of such milk. It is appropriate, therefore, that the regulated handler should be responsible for payment for the administrative assessment on such unregulated milk.

While the proposed order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area, an assessment should not be made on other source milk on which an assessment was made under another Federal milk marketing order.

*Marketing Service Deduction.* Proper payment to producers is assured by the verification of producer weights and producer butterfat tests and by keeping producers well informed about marketing conditions.

If a producer is a member of a cooperative association, these services are performed by the cooperative association and are paid for by the members of the cooperative association. In the case of nonmember producers, however, the Act authorizes a handler to deduct a fee from the payment to nonmember producers for marketing services, which are provided by the market administrator or an agent selected by the market administrator.

There is no need for the market administrator to duplicate the services which a cooperative association normally provides for its membership. However, since the market administrator must rely on the cooperative's results to insure a proper accounting of milk and butterfat, it is essential that the cooperative association's performance of these marketing services be reviewed by the Secretary. A cooperative association will not be entitled to perform marketing services until it files an application to do so with the market administrator and demonstrates that it is fully qualified and capable of performing these services.

Section 1007.86 of the proposed order provides the procedure by which producers pay the cost of marketing services provided by the market administrator.

Nonmember producers who will be pooled under the proposed order will be dispersed over a wide geographic area. It is likely that the cost to the market administrator of performing marketing services for nonmembers will be as high as that now incurred under the separate orders. Therefore, the cooperative coalition proposal for a seven-cent maximum fee should be adopted. This is the maximum fee now permitted under Orders 93 and 108, but slightly higher than the level currently permitted under Orders 7, 94, and 96. It should be stressed, however, that this is a maximum fee that may be charged for these services; it may be that the market administrator can perform these services at a lower rate. Nevertheless, to err on the side of caution, a seven-cent maximum fee should be provided.

The separate funds that have been accumulated under each of the orders to defray the costs of administration and providing marketing services to producers, as well as the producer-settlement fund reserves, should be consolidated under the merged order. Consolidation of these funds provides an effective and equitable way of avoiding an interruption of services and regulation in the area. Any liabilities of such funds under the current orders should be paid from the appropriate new fund under the merged order. Similarly, any obligations that are due to the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

**Motions To Reopen the Hearing**

Several parties motioned to reopen the hearing. Fleming and Purity argued that there was no proposal to increase the price at Nashville, decrease the price at Covington, decrease the price at Montgomery, or decrease the price at Huntsville. In addition, they state that since the hearing there has been a major restructuring and reorganization of plant ownership and milk supplies in the Southeast and that the dominant cooperative association, Mid-America Dairymen, Inc., has entered into full supply agreements with Meadow Gold, Borden, and Barber Pure Milk Company plants, effectively requiring independent producers supplying those plants to join the cooperative association or lose the market for their milk. Fleming and Purity maintain that Mid-Am knew of these changes but concealed them from the hearing participants, who should have an opportunity to address them.

Gold Star Dairy requested that the hearing be reopened to receive additional testimony and evidence on the Class I price zones and the size of the marketing area. Gold Star excepted to the increase in Class I price at Little Rock, the 17-cent reduction in price at Covington, Tennessee, and the price reductions in Louisiana, an area that is

priced well above Gold Star's location in Little Rock. As far as marketing area is concerned, Gold Star states in its exception that ''in large part Gold Star does not care which order it is pooled on so long as its pricing and competitive price structure does not change.''

Dairy Fresh Corporation of Greensboro, Alabama, asked for a reopened hearing because the price at its plant in Hattiesburg was increased by 3 cents, while the prices at Canton, Jackson, and Kosciusko, Mississippi, were reduced by 17 cents, 7 cents, and 12 cents, respectively, the price at New Orleans was reduced by 17 cents, and the price at Baton Rouge was reduced by 10 cents. In addition, Dairy Fresh did not agree that a 10-cent increase in price was necessary for its Cowarts, Alabama, plant.

Admittedly, there have been many changes in the Southeast marketing area since the November 1993 hearing. Many of these changes were noted in the recommended decision. Others have been pointed out in this decision. Since these changes are well known to the handlers and producers in this market and to the Department, there is nothing to be gained by reopening the hearing.

With respect to the arguments of Fleming, Purity, Gold Star, Barber, and Dairy Fresh that they had no notice of the price changes and no opportunity to address the issues, it is determined that, on the contrary, they did have notice and an opportunity to present evidence regarding all provisions of the merged order. Furthermore, they addressed these issues in their exceptions and the Department carefully reviewed their arguments, and, for the most part, made changes as a result of them. In particular, the price at Nashville was reduced from $2.60 to $2.55, the price at Covington was increased from $2.60 to $2.70, the price at Little Rock was reduced from $2.77 to $2.70, the price at Cowarts, Alabama, was reduced from $3.48 to $3.40, the price at Hattiesburg was reduced from $3.48 to $3.40, and the price at Mobile was reduced from $3.68 to $3.65. With respect to price reductions that were made in higher-priced areas to improve alignment or to revise price increases that were made in 1985, it is concluded that Fleming, Purity, Gold Star, and Dairy Fresh have no right to expect prices to be maintained that are higher than necessary simply so that these handlers can sell their milk in higher-priced markets in Alabama, Mississippi, Georgia, and Louisiana.

The administrative rulemaking procedure has worked as it is supposed to work in this proceeding. Many different proposals were evaluated. They were combined and modified as deemed to be appropriate and interested parties were given an opportunity to comment on the recommended decision. In this final decision, the exceptions to the recommended decision were considered and justified changes were adopted. There is no reason to delay this proceeding for at least another year by reopening the hearing to hear facts that are generally known to everyone involved with this matter. The requests to reopen the hearing, accordingly, are denied.

**Rulings on Proposed Findings and Conclusions**

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

**General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the Southeast order, which merges and amends the Georgia, Alabama-West Florida, Greater Louisiana, New Orleans-Mississippi, and Central Arkansas orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The Southeast order will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the Southeast order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require each handler to pay, as its pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1007.85 of the aforesaid tentative marketing agreement and the Southeast order.

**Rulings on Exceptions**

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

**Marketing Agreement and Order**

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk in the Southeast marketing area and an Order amending the order regulating the handling of milk in the Southeast marketing area, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

**Referendum Order to Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent**

It is hereby directed that a referenda be conducted and completed on or before the 30th day from the date this decision is issued, in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the order as amended and as hereby proposed to be amended, regulating the handling of milk in the Southeast marketing area is approved or favored by producers, as defined under the terms of the individual orders (as amended and as hereby proposed to be amended), who during such

representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be March 1995.

The agents of the Secretary to conduct such referenda are hereby designated to be the market administrators of the aforesaid orders.

### Determination of Producer Approval and Representative Period

March 1995 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the merged order regulating the handling of milk in the Southeast marketing area is approved or favored by producers as defined under the terms of the individual orders (as amended and as hereby proposed to be amended) who during the representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

### List of Subjects in 7 CFR Part 1007

Milk marketing orders.

Dated: May 3, 1995.

**Patricia A. Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

### Order Amending the Order Regulating the Handling of Milk in the Southeast Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

### Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require each handler to pay, as its pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1007.85.

### Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Southeast marketing area shall be in conformity to and in compliance with the terms and conditions of the following attached order.

It is proposed to revise 7 CFR part 1007 to read as follows:

## PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

### Subpart—Order Regulating Handling

General Provisions

Sec.
1007.1 General provisions.

Definitions

1007.2 Southeast marketing area.
1007.3 Route disposition.
1007.4 Plant.
1007.5 Distributing plant.
1007.6 Supply plant.
1007.7 Pool plant.
1007.8 Nonpool plant.
1007.9 Handler.
1007.10 Producer-handler.
1007.11 [Reserved].
1007.12 Producer.
1007.13 Producer milk.
1007.14 Other source milk.
1007.15 Fluid milk product.
1007.16 Fluid cream product.
1007.17 Filled milk.
1007.18 Cooperative association.
1007.19 Commercial food processing establishment.

Handler Reports

1007.30 Reports of receipts and utilization.
1007.31 Payroll reports.
1007.32 Other reports.

Classification of Milk

1007.40 Classes of utilization.
1007.41 Shrinkage.
1007.42 Classification of transfers and diversions.
1007.43 General classification rules.
1007.44 Classification of producer milk.
1007.45 Market administrator's reports and announcements concerning classification.

Class Prices

1007.50 Class prices.
1007.51 Basic formula price.
1007.52 Plant location adjustments for handlers.
1007.53 Announcement of class prices.
1007.54 Equivalent price.

Uniform Prices

1007.60 Handler's value of milk for computing the uniform price.
1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).
1007.62 Announcement of uniform price and butterfat differential.

Payments for Milk

1007.70 Producer-settlement fund.
1007.71 Payments to the producer-settlement fund.
1007.72 Payments from the producer-settlement fund.
1007.73 Payments to producers and to cooperative associations.
1007.74 Butterfat differential.
1007.75 Plant location adjustments for producers and on nonpool milk.
1007.76 Payments by a handler operating a partially regulated distributing plant.
1007.77 Adjustment of accounts.
1007.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1007.85 Assessment for order administration.
1007.86 Deduction for marketing services.

Base-Excess Plan

1007.90 Base milk.
1007.91 Excess milk.
1007.92 Computation of base for each producer.
1007.93 Base rules.
1007.94 Announcement of established bases.

**Authority:** 7 U.S.C. 601–674.

## Subpart—Order Regulating Handling

### General Provisions

#### § 1007.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

### Definitions

#### § 1007.2 Southeast marketing area.

The *Southeast marketing area,* hereinafter called the *marketing area,* means all territory within the bounds of the following Alabama, Florida, Georgia, Mississippi, Tennessee, and Arkansas counties and Louisiana parishes, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties or parishes:

*Zone 1*

Arkansas counties: Baxter, Clay, Fulton, Greene, Izard, Lawrence, Randolph, and Sharp.

Tennessee counties: Cheatham, Clay, Davidson, Dickson, Fentress, Henry, Houston, Jackson, Lake, Macon, Montgomery, Obion, Overton, Pickett, Robertson, Smith, Stewart, Sumner, Trousdale, Weakley, and Wilson.

*Zone 2*

Arkansas counties: Newton, Searcy, and Stone.

Tennessee counties: Bedford, Benton, Bledsoe, Cannon, Carroll, Chester, Coffee, Crockett, DeKalb, Decatur, Dyer, Gibson, Grundy, Henderson, Hickman, Humphreys, Lewis, Madison, Marshall, Maury, Perry, Putnam, Rutherford, Van Buren, Warren, White, and Williamson.

*Zone 3*

Arkansas counties: Cleburne, Craighead, Independence, Jackson, Johnson, Mississippi, Poinsett, Pope, and Van Buren.

Tennessee counties: Lauderdale, Tipton, and Haywood.

*Zone 4*

Arkansas counties: Conway, Crittenden, Cross, Faulkner, Garland, Lee, Lonoke, Monroe, Montgomery, Perry, Polk, Prairie, Pulaski, Saline, St. Francis, White, Woodruff, and Yell.

Tennessee counties: Fayette, Franklin, Giles, Hardeman, Hardin, Lawrence, Lincoln, McNairy, Moore, Shelby, and Wayne.

*Zone 5*

Alabama counties: Colbert, De Kalb, Franklin, Jackson, Lauderdale, Lawrence, Limestone, Madison, Marshall, and Morgan.

Arkansas counties: Arkansas, Clark, Grant, Hot Spring, Howard, Jefferson, Phillips, Pike, and Sevier.

Georgia counties: Gilmer, Towns, and Union.

Mississippi counties: Alcorn, Benton, Coahoma, DeSoto, Itawamba, Lafayette, Lee, Marshall, Panola, Pontotoc, Prentiss, Quitman, Tate, Tippah, Tishomingo, Tunica, and Union.

*Zone 6*

Alabama counties: Blount, Cherokee, Cullman, Etowah, Fayette, Lamar, Marion, Walker, and Winston.

Arkansas counties: Bradley, Calhoun, Cleveland, Dallas, Desha, Drew, Hempstead, Lincoln, Little River, Nevada, and Ouachita.

Georgia counties: Bartow, Cherokee, Dawson, Floyd, Gordon, Habersham, Lumpkin, Pickens, Rabun, and White.

Mississippi counties: Bolivar, Calhoun, Chickasaw, Grenada, Monroe, Sunflower, Tallahatchie, and Yalobusha.

*Zone 7*

Alabama counties: Bibb, Calhoun, Clay, Cleburne, Jefferson, Pickens, Randolph, Shelby, St. Clair, Talladega, and Tuscaloosa.

Arkansas counties: Ashley, Chicot, Columbia, Lafayette, Miller, and Union.

Georgia counties: Banks, Barrow, Butts, Carroll, Clarke, Clayton, Cobb, Coweta, De Kalb, Douglas, Elbert, Fayette, Forsyth, Franklin, Fulton, Greene, Gwinnett, Hall, Haralson, Hart, Heard, Henry, Jackson, Jasper, Lincoln, Madison, Morgan, Newton, Oconee, Oglethorpe, Paulding, Polk, Putnam, Rockdale, Spalding, Stephens, Taliaferro, Walton, and Wilkes.

Mississippi counties: Attala, Carroll, Choctaw, Clay, Holmes, Humphreys, Leflore, Lowndes, Montgomery, Noxubee, Oktibbeha, Washington, Webster, and Winston.

*Zone 8*

Alabama counties: Chambers, Chilton, Coosa, Greene, Hale, Lee, Perry, Sumter (north of U.S. 80), and Tallapoosa.

Georgia counties: Baldwin, Bibb, Burke, Columbia, Crawford, Glascock, Hancock, Harris, Jefferson, Jones, Lamar, McDuffie, Meriwether, Monroe, Muscogee, Pike, Richmond, Talbot, Taylor, Troup, Twiggs, Upson, Warren, Washington, and Wilkinson.

Louisiana parishes: Bienville, Bossier, Caddo, Claiborne, East Carroll, Jackson, Lincoln, Morehouse, Ouachita, Richland, Union, Webster, and West Carroll.

Mississippi counties: Issaquena, Kemper, Leake, Madison, Neshoba, Sharkey, and Yazoo.

*Zone 9*

Alabama counties: Autauga, Bullock, Dallas, Elmore, Lowndes, Macon, Marengo, Monroe, Montgomery, Russell, Sumter (south of U.S. 80), and Wilcox.

Georgia counties: Bleckley, Bulloch, Candler, Chattahoochee, Crisp, Dodge, Dooly, Effingham, Emanuel, Evans, Houston, Jenkins, Johnson, Laurens, Macon, Marion, Montgomery, Peach, Pulaski, Schley, Screven, Stewart, Sumter, Tattnall, Telfair, Toombs, Treutlen, Webster, Wheeler, and Wilcox.

Louisiana parishes: Caldwell, De Soto, Franklin, Madison, Natchitoches (north of State Highway 6 and U.S. 84), Red River, Tensas, and Winn.

Mississippi counties: Claiborne, Clarke, Copiah, Hinds, Jasper, Lauderdale, Newton, Rankin, Scott, Simpson, Smith, and Warren.

*Zone 10*

Alabama counties: Barbour, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Houston, Monroe, Pike, and Washington.

Georgia counties: Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Brantley, Brooks, Bryan, Calhoun, Camden, Charlton, Chatham, Clay, Clinch, Coffee, Colquitt, Cook, Decatur, Dougherty, Early, Echols, Glynn, Grady, Irwin, Jeff Davis, Lanier, Lee, Liberty, Long, Lowndes, McIntosh, Miller, Mitchell, Pierce, Quitman, Randolph, Seminole, Terrell, Thomas, Tift, Turner, Ware, Wayne, and Worth.

Louisiana parishes: Avoyelles, Catahoula, Concordia, Grant, La Salle, Natchitoches (south of State Highway 6 and U.S. 84), Rapides, Sabine, and Vernon.

Mississippi counties: Adams, Amite, Covington, Forrest, Franklin, Greene, Jefferson, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthall, Wayne, and Wilkinson.

*Zone 11*

Alabama counties: Baldwin and Mobile (more than 20 miles from the Mobile city hall).

Florida counties: Escambia, Okaloosa, Santa Rosa, and Walton.

Louisiana parishes: Allen, Beauregard, East Feliciana, Evangeline, Pointe Coupee, St. Helena, St. Landry, St. Tammany, Tangipahoa, Washington, and West Feliciana.

Mississippi counties: George, Hancock, Harrison, Jackson, Pearl River, and Stone.

*Zone 12*

Alabama counties: Mobile (within 20 miles of the Mobile city hall).

Louisiana parishes: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Martin, St. Mary, Terrebonne, Vermilion, and West Baton Rouge.

#### § 1007.3 Route disposition.

*Route disposition* means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk. Packaged fluid milk products that are transferred to a distributing plant from a plant with route disposition in the marketing area and which are classified as Class I under § 1007.40(a) shall be considered as route disposition from the transferor plant, rather than the transferee plant, for the single purpose of qualifying it as a pool plant under § 1007.7(a).

**§ 1007.4 Plant.**

*Plant* means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products, including filled milk, are received, processed, or packaged. Separate facilities without stationary storage tanks that are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

**§ 1007.5 Distributing plant.**

*Distributing plant* means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

**§ 1007.6 Supply plant.**

*Supply plant* means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

**§ 1007.7 Pool plant.**

*Pool plant* means a plant specified in paragraphs (a), (b), (c) or (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (a) through (c) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant from which during the month:

(1) Total route disposition, except filled milk, is equal to 50 percent or more of the total quantity of Grade A fluid milk products, except filled milk, physically received at such plant or diverted therefrom pursuant to § 1007.13; and

(2) Route disposition, except filled milk, in the marketing area is at least the lesser of a daily average of 1,500 pounds or 10 percent of the total quantity of fluid milk products, except filled milk, physically received or diverted therefrom pursuant to § 1007.13.

(b) A supply plant from which during each of the months of July through November 60 percent (40 percent during each of the months of December through June) of the total quantity of Grade A milk that is received during the month from dairy farmers (including producer milk diverted from the plant pursuant to § 1007.13 but excluding milk diverted to such plant) and handlers described in § 1007.9(c) is transferred to pool distributing plants.

(c) A plant located within the Southeast marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product from the cooperative's plant. Such deliveries, in excess of receipts by transfer from pool distributing plants, must equal not less than 60 percent of the total producer milk of such cooperative association in each of the months of July through November, and 40 percent of such milk in each of the months of December through June. The plant's pool plant status shall be subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraphs (a) or (b) of this section or under the provisions of another Federal order applicable to a distributing plant or a supply plant; and

(2) The plant is approved by a duly constituted regulatory agency to handle Grade A milk.

(d) A plant located within the marketing area (other than a producer-handler plant or a governmental agency plant) that meets the qualifications described in paragraph (a) of this section regardless of its quantity of route disposition in any other Federal order marketing area.

(e) Two or more plants operated by the same handler and that are located within the Southeast marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable percentages in paragraphs (a) through (c) of this section may be increased or decreased up to 10 percentage points by the market administrator if, following a written request for such a revision, the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision by conducting an investigation and conferring with the Director of the Dairy Division. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing seven days before the effective date.

(g) The term *pool plant* shall not apply to the following plants:

(1) A *producer-handler* plant;

(2) An *exempt plant* as defined in § 1007.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within the Southeast marketing area, meets the pooling requirements of another Federal order, and has had greater sales in such other Federal order marketing area for three consecutive months, including the current month;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another order's marketing area and which is required to be regulated under such other order because of its location within the other order's marketing area; and

(5) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under this part, or such plant has automatic pooling status under such other order.

**§ 1007.8 Nonpool plant.**

*Nonpool plant* means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler* plant means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant, from which

there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt plant.

(e) *Exempt plant* means a plant:

(1) Operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part; or

(2) Which has monthly route disposition of 100,000 pounds or less during the month. Such plant will be exempt from the pricing and pooling provisions of this order, but the handler will be required to file periodic reports as prescribed by the market administrator to enable determination of the exempt status of such handler.

**§ 1007.9 Handler.**

*Handler* means:

(a) Any person who operates one or more pool plants;

(b) Any cooperative with respect to producer milk which it causes to be diverted pursuant to § 1007.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1007.8(a);

(g) Any person who operates an unregulated supply plant; and

(h) Any person who operates an exempt plant.

**§ 1007.10 Producer-handler.**

*Producer-handler* means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in excess of 100,000 pounds per month;

(b) Receives no Class I milk from sources other than his/her own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his/her personal enterprise and personal risk.

**§ 1007.11 [Reserved]**

**§ 1007.12 Producer.**

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such producer;

(2) Received by a handler described in § 1007.9(c); or

(3) Diverted from a pool plant in accordance with § 1007.13.

(b) *Producer* shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by such person whose milk is delivered to an exempt plant, excluding producer milk diverted to such exempt plant pursuant to § 1007.13;

(3) Any person with respect to milk produced by such person which is diverted to a pool plant from an other order plant if the other order plant designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1007.44(a)(8)(iii) and the corresponding step of § 1007.44(b); or

(4) Any person with respect to milk produced by such person which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

**§ 1007.13 Producer milk.**

*Producer milk* means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1007.9(c);

(c) Diverted from a pool plant to the pool plant of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) In any month of December through June, not less than four days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through November, not less than ten days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through November, or 50 percent during the months of December through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(d)) during the month;

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that will not be producer milk pursuant to paragraphs (d)(3) and (4) of this section. If the handler fails to make such designation, no milk diverted by such handler shall be producer milk;

(6) To the extent that it would result in nonpool status for the plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(7) The cooperative association shall designate the dairy farm deliveries that are not producer milk pursuant to paragraph (d)(6) of this section. If the cooperative association fails to make such designation, no milk diverted by it to a nonpool plant shall be producer milk;

(8) Diverted milk shall be priced at the location of the plant to which diverted; and

(9) The market administrator may increase or decrease the applicable percentages in paragraphs (d)(3) and (4) of this section by up to 10 percentage points, and may increase or decrease the 10-day and 4-day delivery requirements in paragraphs (d)(1) and (2) of this section by 50 percent if, following a written request for such a revision, the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision by conducting an investigation and conferring with the Director of the Dairy Division. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing seven days before the effective date.

**§ 1007.14 Other source milk.**

*Other source milk* means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1007.40(b)(1) from any source other than producers, a handler described in § 1007.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1007.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1007.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1007.40(b)(1)) for which the handler fails to establish a disposition.

**§ 1007.15 Fluid milk product.**

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat, that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: Milk, skim milk, lowfat milk, milk drinks, buttermilk, and filled milk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated (to not more than 50 percent total milk solids), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk, plain or sweetened evaporated skim milk, sweetened condensed milk or skim milk, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

**§ 1007.16 Fluid cream product.**

*Fluid cream product* means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

**§ 1007.17 Filled milk.**

*Filled milk* means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

**§ 1007.18 Cooperative association.**

*Cooperative association* means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the ''Capper-Volstead Act;'' and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing, milk or milk products for its members.

**§ 1007.19 Commercial food processing establishment.**

*Commercial food processing establishment* means any facility, other than a milk or filled milk plant, to which bulk fluid milk products and bulk fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products, and has no disposition of fluid milk products or fluid cream products other than those that it received in consumer type packages. Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, provisions in §§ 1007.13, 1007.41, and 1007.52.

## Handler Reports

**§ 1007.30 Reports of receipts and utilization.**

On or before the 5th day after the end of the month (if postmarked), or not later than the 7th day if the report is delivered in person to the office of the market administrator, each handler shall report for such month to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1007.9 (b) and (c) shall report:

(1) The quantities of skim milk and butterfat contained in receipts from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

**§ 1007.31 Payroll reports.**

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator its producer payroll for such month, in detail prescribed by the market administrator, showing for each producer:

(1) Such producer's name and address;

(2) The total pounds of milk received from such producer, showing separately the pounds of milk received from the producer on each delivery day;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deduction, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1007.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

**§ 1007.32 Other reports.**

(a) Each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator on or before the 7th day after the end of each month of February through May the aggregate quantity of base milk received from producers during the month, and on or before the 20th day after the end of each month of February through May the pounds of base milk received from each producer during the month. In the case of milk diverted to another plant, the handler shall also report the pounds of base milk of each producer assigned to the divertee plant.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1007.30 and 1007.31, each handler shall report such information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

## Classification of Milk

**§ 1007.40 Classes of utilization.**

Except as provided in § 1007.42, all skim milk and butterfat required to be reported pursuant to § 1007.30 shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk* shall be all skim milk and butterfat:

(1) Disposed in the form of a fluid cream product or any product containing artificial fat, fat substitutes, or 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section and in bulk concentrated fluid milk products in inventory at the end of the month;

(3) In bulk fluid milk products and bulk fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in one-quart containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Eggnog, custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter, and similar products;

(v) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically sealed containers;

(vi) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products; and

(vii) Any product not otherwise specified in this section.

(c) *Class III milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled, and are not included in paragraph (b)(4)(i) of this section;

(ii) Butter, plastic cream, anhydrous milkfat, and butteroil;

(iii) Any milk product in dry form except nonfat dry milk;

(iv) Evaporated or sweetened condensed milk in a consumer-type package and evaporated or sweetened condensed skim milk in a consumer-type package; and

(2) In inventory at the end of the month of unconcentrated fluid milk products in bulk form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4)(i) through (iv) of this section, that are disposed of by a handler for animal feed;

(4) In fluid milk products, products specified in paragraph (b)(1) of this section, and products processed by the disposing handler that are specified in paragraphs (b)(4) (i) through (iv) of this section, that are dumped by a handler. The market administrator may require notification by the handler of such dumping in advance for the purpose of having the opportunity to verify such disposition. In any case, classification under this paragraph requires a handler to maintain adequate records of such use. If advance notification of such dumping is not possible, or if the market administrator so requires, the handler must notify the market administrator on the next business day following such use;

(5) In fluid milk products and products specified in paragraph (b)(1) of this section that are destroyed or lost by a handler in a vehicular accident, flood, fire, or in a similar occurrence beyond the handler's control, to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator;

(6) In skim milk in any modified fluid milk product or in any product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1007.15 and the fluid cream product definition pursuant to § 1007.16; and

(7) In shrinkage assigned pursuant to § 1007.41(a) to the receipts specified in § 1007.41(a)(2) and in shrinkage specified in § 1007.41 (b) and (c).

(d) *Class III–A* milk shall be all skim milk and butterfat used to produce nonfat dry milk.

**§ 1007.41 Shrinkage.**

For the purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1007.30, the

market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1007.9(c), except that if the operator of the plant to which the milk is delivered purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchased such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amount of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

**§ 1007.42 Classification of transfers and diversions.**

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b). The amount of skim milk or butterfat classified in each class shall include the assigned utilization of skim milk or butterfat in transfers of concentrated fluid milk products.

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(7) or the corresponding step of § 1007.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(11) or (12) or the corresponding steps of § 1007.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section.

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to the class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1007.40.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under another Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product;

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product to an exempt plant. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(A) The transferor-handler or divertor-handler claims such classification in such handler's report of receipts and utilization filed pursuant § 1007.30 for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plants from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plants from other order plants;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be classified to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class II utilization, and then to Class III utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class II utilization, then to any remaining Class III utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

(e) *Transfers by a handler described in § 1007.9(c) to pool plants.* Skim milk and butterfat transferred in the form of bulk milk by a handler described in § 1007.9(c) to another handler's pool plant shall be classified pursuant to § 1007.44 pro rata with producer milk received at the transferee-handler's plant.

**§ 1007.43 General classification rules.**

In determining the classification of producer milk pursuant to § 1007.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1007.30 and shall compute separately for each pool plant, and for each cooperative association with respect to milk for which it is the handler pursuant to § 1007.9 (b) or (c) that was not received at a pool plant, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1007.40, 1007.41, and 1007.42. The combined pounds of skim milk and butterfat so determined in each class for a handler described in § 1007.9 (b) or (c) shall be such handler's classification of producer milk;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association;

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignment under § 1007.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1007.44 on a pro rata

basis, unless a specific use of such receipts is established by the handler; and

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

**§ 1007.44 Classification of producer milk.**

For each month the market administrator shall determine for each handler described in § 1007.9(a) for each pool plant of the handler separately the classification of producer milk and milk received from a handler described in § 1007.9(c), by allocating the handler's receipts of skim milk and butterfat to the utilization of such receipts by such handler as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1007.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) in packaged form and in bulk concentrated fluid milk products that were in inventory at the beginning of the month, but not in excess of the pounds of skim milk remaining in Class II. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1007.40(b) (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1007.40(c)(6)), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1007.40(b)(1) that were not subtracted pursuant to paragraphs (a)(4), (a)(5), and (a)(6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under any Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is fully regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (A) through (C) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(A) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(B) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1007.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(C) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products

transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1007.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(2)(ii), (a)(5), and (a)(7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2)(i), (a)(7)(v), (a)(8)(i), and (a)(8)(ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to paragraph (a)(11) of this section exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii) and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(A) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1007.45(a); or

(B) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1007.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk and milk received from a handler described in § 1007.9(c), subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as ''overage'';

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk and milk received from a handler described in § 1007.9(c) in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

**§ 1007.45 Market administrator's reports and announcements concerning classification.**

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from another order plant, the class to which such receipts are allocated pursuant to §§ 1007.43(d) and 1007.44 on the basis of such report (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to another order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association that was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

## Class Prices

**§ 1007.50 Class prices.**

Subject to the provisions of § 1007.52, the class prices for the month per hundredweight of milk containing 3.5% butterfat shall be as follows:

(a) The *Class I price* shall be the basic formula price for the second preceding month plus $3.08.

(b) The *Class II price* shall be the basic formula price for the second preceding month plus $.30.

(c) The *Class III price* shall be the basic formula price for the month.

(d) The *Class III-A price* for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing 0.4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

**§ 1007.51 Basic formula price.**

The *basic formula price* shall be the preceding month's average pay price for manufacturing grade milk in Minnesota and Wisconsin using the ''base month'' series, as reported by the Department, adjusted to a 3.5 percent butterfat basis using the butterfat differential for the preceding month computed pursuant to § 1007.74 and rounded to the nearest cent, plus or minus the change in gross value yielded by the butter-nonfat dry milk and Cheddar cheese product price formula computed pursuant to paragraphs (a) through (e) of this section.

(a) The gross values of per hundredweight of milk used to manufacture butter-nonfat dry milk and Cheddar cheese shall be computed, using price data determined pursuant to paragraph (b) of this section and annual yield factors, for the preceding month and separately for the current month as follows:

(1) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the Grade AA butter price by 4.27;

(ii) Multiply the nonfat dry milk price by 8.07; and

(iii) Multiply the dry buttermilk price by 0.42.

(2) The gross value of milk used to manufacture Cheddar cheese shall be the sum of the following computations:

(i) Multiply the Cheddar cheese price by 9.87; and

(ii) Multiply the Grade A butter price by 0.238.

(b) The following product prices shall be used pursuant to paragraph (a) of this section:

(1) *Grade AA butter price.* Grade AA butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade AA butter price, as reported by the Department.

(2) *Nonfat dry milk price.* Nonfat dry milk price means the simple average for the month of the Western Nonfat Dry Milk Low/Medium Heat price, as reported by the Department.

(3) *Dry buttermilk price.* Dry buttermilk price means the simple average for the month of the Western Dry Buttermilk price, as reported by the Department.

(4) *Cheddar cheese price.* Cheddar cheese price means the simple average for the month of the National Cheese Exchange 40-pound block Cheddar cheese price, as reported by the Department.

(5) *Grade A butter price.* Grade A butter price means the simple average for the month of the Chicago Mercantile Exchange Grade A butter price, as reported by the Department.

(c) Determine the amounts by which the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk and the gross value per hundredweight of milk used to manufacture Cheddar cheese for the current month exceed or are less than the respective gross values for the preceding month.

(d) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (c) of this section by determining the relative proportion that the data included in each of the following paragraphs is of the total of the data represented in paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

**§ 1007.52 Plant location adjustments for handlers.**

(a) For milk received at a plant from producers or a handler described in § 1007.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1007.50(a) shall be adjusted by the amount stated in paragraphs (a)(1) through (6) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1007.2, the adjustment (cents per hundredweight) shall be as follows:

| | |
|---|---|
| Zone 1 | Minus 53 |
| Zone 2 | Minus 48 |
| Zone 3 | Minus 38 |
| Zone 4 | Minus 31 |
| Zone 5 | Minus 25 |
| Zone 6 | Minus 10 |
| Zone 7 | No adjustment |
| Zone 8 | Plus 10 |
| Zone 9 | Plus 20 |
| Zone 10 | Plus 32 |
| Zone 11 | Plus 50 |
| Zone 12 | Plus 57 |

(2) For a plant located in that portion of the Tennessee Valley marketing area that is within the State of Georgia, the adjustment shall be minus 25 cents.

(3) For a plant located in the Missouri counties of Dunklin or Pemiscot, the adjustment shall be minus 53 cents.

(4) For a plant located in the Texas counties of Bowie or Cass, the adjustment shall be zero.

(5) For a plant located within another Federal order marketing area, other than in those counties specified in paragraphs (2), (3), and (4) of this section, the adjustment shall be determined by subtracting the Class I differential price in Zone 7 of this order from the Class I differential price, adjusted for the plant's location, under such other Federal order.

(6) For a plant located outside the areas described in paragraphs (a)(1) through (5) of this section, the adjustment shall be computed by multiplying 2.5 cents per 10 miles, or fraction thereof (by the shortest hard-surfaced highway distance as determined by the market administrator), from the nearer of Shreveport, Louisiana; Little Rock, Arkansas; Memphis, Tennessee; Jackson, Tennessee; Nashville, Tennessee; or Atlanta, Georgia, and subtracting that figure from the location adjustment applicable at Shreveport, Little Rock, Memphis, Jackson, Nashville, or Atlanta, as the case may be.

(b) For fluid milk products transferred in bulk form from a pool plant to a pool distributing plant at which a higher Class I price applies and which are classified as Class I milk, the Class I price shall be the Class I price at the transferee-plant subject to a location adjustment credit for the transferor-plant which shall be determined by the market administrator for skim milk and butterfat, respectively, as follows:

(1) Subtract from the pounds of skim milk remaining in Class I at the transferee-plant after the computations pursuant to § 1007.44(a)(12) plus the pounds of skim milk in receipts of concentrated fluid milk products from other pool plants that are assigned to Class I use, an amount equal to:

(i) The pounds of skim milk in receipts of milk at the transferee-plant from producers and handlers described in § 1007.9(c); and

(ii) The pounds of skim milk in receipts of packaged fluid milk products from other pool plants;

(2) Assign any remaining pounds of skim milk in Class I at the transferee-plant to the skim milk in receipts of fluid milk products from other pool plants, first to the transferor-plants at which the highest Class I price applies and then to other plants in sequence beginning with the plant at which the next highest Class I price applies;

(3) Compute the total amount of location adjustment credits to be assigned to transferor-plants by multiplying the hundredweight of skim milk assigned pursuant to paragraph (b)(2) of this section to each transferor-plant at which the Class I price is lower than the Class I price applicable at the transferor-plant and the transferee-plant, and add the resulting amounts;

(4) Assign the total amount of location adjustment credits computed pursuant to paragraph (b)(3) of this section to those transferor-plants that transferred fluid milk products containing skim milk classified as Class I milk pursuant to § 1007.42(a) and at which the applicable Class I price is less than the Class I price at the transferee-plant, in sequence beginning with the plant at which the highest Class I price applies. Subject to the availability of such credits, the credit assigned to each plant shall be equal to the hundredweight of such Class I skim milk multiplied by the adjustment rate determined pursuant to paragraph (b)(3) of this section for such plant. If the aggregate of this computation for all plants having the same adjustment as determined pursuant to paragraph (b)(3) of this section exceeds the credits that are available to those plants, such credits shall be prorated to the volume of skim milk in Class I in transfers from such plants; and

(5) Location adjustment credit for butterfat shall be determined in accordance with the procedure outlined for skim milk in paragraphs (b)(1) through (4) of this section.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

**§ 1007.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and Class II prices for the following month, and the Class III and Class III–A prices for the preceding month.

**§ 1007.54 Equivalent price.**

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

## Uniform Prices

**§ 1007.60 Handler's value of milk for computing the uniform price.**

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1007.9 (b) and (c) with respect to milk that was not received at a pool plant as follows:

(a) Multiply the pounds of producer milk and milk received from a handler described in § 1007.9(c) that were classified in each class pursuant to §§ 1007.43(a) and 1007.44(c) by the applicable class prices, and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1007.44(a)(14) and the corresponding step of § 1007.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1007.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month

and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1007.44(a)(9) and the corresponding step of § 1007.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1007.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (i) through (iv) and the corresponding step of § 1007.44(b), excluding receipts of bulk fluid cream products from an other order plant and bulk concentrated fluid milk products from pool plants, other order plants, and unregulated supply plants;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (v) and (vi) and the corresponding step of § 1007.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1007.43(d) and § 1007.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(11) and the corresponding step of § 1007.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(g) Subtract, for reconstituted milk made from receipts of nonfluid milk products, an amount computed by multiplying $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class III price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1007.43(d);

(h) Exclude, for pricing purposes under this section, receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another order under § 1007.76(a)(5) or (c); and

(i) For pool plants that transfer bulk concentrated fluid milk products to other pool plants and other order plants, add or subtract the amount per hundredweight of any class price change from the previous month that results from any inventory reclassification of bulk concentrated fluid milk products that occurs at the transferee plant. Any such applicable class price change shall be applied to the plant that used the concentrated milk in the event that the concentrated fluid milk products were made from bulk unconcentrated fluid milk products received at the plant during the prior month.

**§ 1007.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).**

(a) The market administrator shall compute the weighted average price for each month and the uniform price for each month of June through January per hundredweight of milk of 3.5 percent butterfat content as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports prescribed in § 1007.30 for the month and who made payments pursuant to § 1007.71 for the preceding month;

(2) Add not less than one-half the unobligated balance in the producer-settlement fund;

(3) Add an amount equal to the total value of the minus adjustments and subtract an amount equal to the total value of the plus adjustments computed pursuant to § 1007.75;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the weighted average price for each month and the uniform price for the months of June through January.

(b) For each month of February through May, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III–A by the Class III–A price:

(ii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class III by the Class III price:

(iii) Multiply the remaining hundredweight quantity of excess milk that does not exceed the total quantity of such handlers' producer milk assigned to Class II by the Class II price:

(iv) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(v) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk;

(3) From the amount resulting from the computations pursuant to paragraphs (a)(1) through (a)(3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure, rounded to the nearest cent, shall be the uniform price for base milk.

**§ 1007.62 Announcement of uniform price and butterfat differential.**

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of the month the applicable uniform price(s) pursuant to § 1007.61 for such month.

## Payments for Milk

### § 1007.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the *producer-settlement fund* into which the market administrator shall deposit all payments made by handlers pursuant to §§ 1007.71, 1007.76, and 1007.77, and out of which the market administrator shall make all payments pursuant to §§ 1007.72 and 1007.77. Payments due any handler shall be offset by any payments due from such handler.

### § 1007.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1007.60.

(2) The sum of:

(i) The value at the uniform price(s) as adjusted pursuant to § 1007.75, of such handler's receipts of producer milk and milk received from handlers pursuant to § 1007.9(c); and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by the difference between the Class I price under this part applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

### § 1007.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(a)(2) exceeds the amount computed pursuant to § 1007.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

### § 1007.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the 26th day of each month, for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler before the 23rd day of the month at not less than the Class III price for the preceding month or 90 percent of the weighted average price for the preceding month, whichever is higher, less proper deductions authorized in writing by the producer. If the producer had discontinued shipping milk to such handler before the 25th day of any month, or if the producer had no established base upon which to receive payments during the base paying months of February through May, the applicable rate for making payments to such producer shall be the Class III price for the preceding month; and

(2) On or before the 15th day of the following month, an amount equal to not less than the uniform price(s), as adjusted pursuant to §§ 1007.74 and 1007.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1007.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer.

(3) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 15th day of such month, such handler may reduce payments pursuant to this paragraph to producers on a pro rata basis but not by more than the amount of the underpayment. Such payments shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(b) On or before the day prior to the dates specified in paragraph (a) (1) and (2) of this section, each handler shall make payment to the cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraph (a) (1) and (2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 15th day of such month, such handler may reduce payments pursuant to paragraph (b) of this section to such cooperative association on a pro rata basis, prorating such underpayment to the volume of milk received from such cooperative association in proportion to the total milk received from producers by the handler, but not by more than the amount of the underpayment. Such payments shall be completed in the following manner:

(1) If the handler receives full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on the 15th day of the month;

(2) If the handler has not received full payment from the market administrator by the 15th day of the month, the handler shall make payment to the cooperative association of the full value of the underpayment on or before the date for making such payments pursuant to this paragraph next following after receipt of the balance due from the market administrator.

(d) Each handler pursuant to § 1007.9(a) who receives milk from a cooperative association as a handler pursuant to § 1007.9(c), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk as follows:

(1) On or before the 25th day of the month for milk received during the first 15 days of the month, not less than the Class III price for the preceding month or 90 percent of the weighted average

price for the preceding month, whichever is higher; and

(2) On or before the 14th day of the following month, not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1007.74 and 1007.75, and less any payments made pursuant to paragraph (d)(1) of this section.

(e) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the 14th day of such month, such handler may reduce payments pursuant to paragraph (d) of this section to such cooperative association and complete such payments for milk received from such cooperative association in its capacity as a handler pursuant to § 1007.9(c), in the manner prescribed in paragraph (c) (1) and (2) of this section.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a handler described in § 1007.9(c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) For the months of February through May the total pounds of base milk received from such producer;

(4) The minimum rate(s) at which payment to the producer is required pursuant to this order;

(5) The rate(s) used in making the payment if such rate(s) is (are) other than the applicable minimum rate(s);

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to such producer or cooperative association.

**§ 1007.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk, in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1007.51(a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

**§ 1007.75 Plant location adjustments for producers and on nonpool milk.**

(a) The uniform price and the uniform price for base milk shall be adjusted according to the location of the plant at which the milk was physically received at the rates set forth in § 1007.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in section § 1007.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

**§ 1007.76 Payments by a handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1007.30(b) and 1007.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be an amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract the pounds of reconstituted milk that are made from nonfluid milk products and which are then disposed of as route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and weighted average price shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant less $1.00 (but not to be less than the Class III price) and the Class III price. For any reconstituted milk that is not so labeled, the Class I price shall not be reduced by $1.00. Alternatively, for such disposition, payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not to be less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1007.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or another order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or another order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be computed to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding

class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1007.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest price class of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1007.60 for such handler shall include, in lieu of the value of other source milk specified in § 1007.60(f) less the value of such other source milk specified in § 1007.71(a)(2)(ii), a value of milk determined pursuant to § 1007.60 for each nonpool plant that is not another order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributed plant during the month equivalent to the requirements of § 1007.7(b), subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ 1007.30(b) and 1007.31(b) similar reports for each such nonpool supply plant;

(B) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § 1007.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of the partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk had the plant been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

(c) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients assigned to Class I use under § 1007.43(d). Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed (but not less than the Class III price) and the Class III price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

### § 1007.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

### § 1007.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator from a handler pursuant to §§ 1007.71, 1007.76, 1007.77, 1007.78, 1007.85, and 1007.86 shall be increased 1.5 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. The late charges shall be added to the respective accounts to which due. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

## Administrative Assessment and Marketing Service Deduction

### § 1007.85 Assessment for order administration.

As each handler's pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Receipts of producer milk (including such handler's own production) other than such receipts by a handler described in § 1007.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1007.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1007.43(d) and other source milk allocated to Class I pursuant to § 1007.44(a) (7) and (11) and the corresponding steps of § 1007.44(b), except such other source milk that is excluded from the computations pursuant to § 1007.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1007.76(a)(2).

### § 1007.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section each handler, in making payments to producers for milk (other than milk of such handler's own production) pursuant to § 1007.73, shall deduct 7 cents per hundredweight or such lesser amount as the Secretary may prescribe and shall pay such deductions

to the market administrator not later than the 15th day after the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator;

(b) In the case of producers for whom a cooperative association that the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 15th day after the end of the month, pay such deductions to the cooperative association rendering such services accompanied by a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

## Base-Excess Plan

### § 1007.90 Base milk.

*Base milk* means the producer milk of a producer in each month of February through May that is not in excess of the producer's base multiplied by the number of days in the month.

### § 1007.91 Excess milk.

*Excess milk* means the producer milk of a producer in each month of February through May in excess of the producer's base milk for the month, and shall include all the producer milk in such months of a producer who has no base.

### § 1007.92 Computation of base for each producer.

(a) Subject to paragraph (c) of this section, a base for each dairy farmer who was a producer pursuant to § 1007.12 during one or more of the immediately preceding months of July through December shall be determined by dividing the total pounds of producer milk delivered by such producer during each of those months by the number of calendar days in the month, adding together the four highest monthly averages so computed, and dividing by four. If a producer operated more than one farm at the same time, a separate computation of base shall be made for each such farm.

(b) Any producer who delivered milk to a nonpool plant that became a pool plant after the beginning of the July–December base-forming period shall be assigned a base calculated as if the plant were a pool plant during such entire base-forming period. A base thus assigned shall not be transferable.

(c) A person who was unable to qualify as a producer during four or more of the immediately preceding months of July through December or who did not have at least four complete months of production, in either case for one or more of the reasons specified in this paragraph, may request a base computation based upon a lesser number of months by submitting to the market administrator in writing on or before February 1 a statement that establishes to the satisfaction of the market administrator that during four or more of the months in the immediately preceding July through December base-forming period the amount of milk produced on such producer's farm was substantially reduced because of conditions beyond the control of such person as a result of:

(1) The loss by fire, windstorm, or other natural disaster of a farm building used in the production of milk on the producer's farm;

(2) Brucellosis, bovine tuberculosis or other infectious diseases in the producer's milking herd as certified by a licensed veterinarian; or

(3) A quarantine by a Federal or State authority that prevented the dairy farmer from supplying milk from the farm of such producer to a plant.

### § 1007.93 Base rules.

(a) Except as provided in § 1007.92 (b) and (c) and paragraph (b) of this section, a base may be transferred in its entirety or in amounts of not less than 300 pounds effective on the first day of the month following the date on which such application is received by the market administrator. Base may be transferred only to a person who is or will be a producer by the end of the month that the transfer is to be effective. A base transfer to be effective on February 1 for the month of February must be received on or before February 15. Such application shall be on a form approved by the market administrator and signed by the baseholder or the legal representative of the baseholder's estate. If a base is held jointly, the application shall be signed by all joint holders or the legal representative of the estate of any deceased baseholder.

(b) A producer who transferred base on or after February 1 may not receive by transfer additional base that would be applicable during February through May of the same year. A producer who received base by transfer on or after February 1 may not transfer a portion of the base to be applicable during February through May of the same year, but may transfer the entire base.

(c) The base established by a partnership may be divided between the partners on any basis agreed to in writing by them if written notification of the agreed upon division of base by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective.

(d) Two or more producers in a partnership may combine their separately established bases by giving notice to the market administrator prior to the first day of the month in which such combination of bases is to be effective.

### § 1007.94 Announcement of established bases.

On or before January 31 of each year, the market administrator shall calculate a base for each person who was a producer during one or more of the preceding months of July through December and shall notify each producer and the handler receiving milk from such dairy farmer of the base established by the producer. If requested by a cooperative association, the market administrator shall notify the cooperative association of each producer-member's base.

[FR Doc. 95–11311 Filed 5–9–95; 8:45 am]
BILLING CODE 3410–02–P

federal register

Wednesday
May 10, 1995

## Part IV

# United States Sentencing Commission

**Amendments to the Sentencing Guidelines for United States Courts; Notice**

## UNITED STATES SENTENCING COMMISSION

## Amendments to the Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of submission to Congress of amendments to the sentencing guidelines.

**SUMMARY:** Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission, on May 1, 1995, submitted to the Congress amendments to the sentencing guidelines, policy statements, and official commentary together with reasons for the amendments.

**DATES:** Pursuant to 28 U.S.C. 994(p), the Commission has specified an effective date of November 1, 1995, for these amendments. Comments regarding amendments that the Commission should specify for retroactive application to previously sentenced defendants should be received no later than June 16, 1995.

**ADDRESSES:** Comments should be sent to: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attn: Public Information.

**FOR FURTHER INFORMATION CONTACT:** Mike Courlander, Public Information Specialist, telephone: (202) 273–4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission, an independent agency in the judicial branch of the U.S. Government, is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to review periodically and revise guidelines previously promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994 (o), (p). Absent action of Congress to the contrary, the amendments become effective on the date specified by the Commission (i.e., November 1, 1995) by operation of law.

Notice of the amendments submitted to the Congress on May 1, 1995, was published in the **Federal Registers** of January 9, 1995 (60 FR 2430) and March 15, 1995 (60 FR 14054). A public hearing on the proposed amendments was held in Washington, DC, on March 14, 1995. After review of the hearing testimony and additional public comment, the Commission promulgated the amendments set forth below, each having been approved by at least four voting Commissioners.

In connection with its ongoing process of guideline review, the Commission welcomes comment on any aspect of the sentencing guidelines, policy statements, and official commentary. Specifically, the Commission solicits comment on which, if any, of the amendments submitted to the Congress that may result in a lower guideline range should be made retroactive to previously sentenced defendants under Policy Statement 1B1.10.

**Authority:** 28 U.S.C. 994 (a), (o), (p).

**Richard P. Conaboy,**

*Chairman.*

### Amendments to the Sentencing Guidelines

Pursuant to Section 994(p) of Title 28, United States Code, the United States Sentencing Commission reports to the Congress the following amendments to the sentencing guidelines, and the reasons therefor. As authorized by this section, the Commission specifies an effective date of November 1, 1995, for these amendments.

*Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary*

1. Amendment: Section 2A2.3 is amended by inserting the following additional subsection:

''(b) Specific Offense Characteristic

(1) If the offense resulted in substantial bodily injury to an individual under the age of sixteen years, increase by 4 levels.''.

The Commentary to § 2A2.3 captioned ''Application Notes'' is amended by inserting the following additional note:

''3. 'Substantial bodily injury' means 'bodily injury which involves—(A) a temporary but substantial disfigurement; or (B) a temporary but substantial loss or impairment of the function of any bodily member, organ, or mental faculty.' 18 U.S.C. 113(b)(1).''.

Reason for Amendment: This amendment addresses the enactment of 18 U.S.C. 113(a)(7) (pertaining to certain assaults against minors) by section 170201 of the Violent Crime Control and Law Enforcement Act of 1994.

2. Amendment: The Commentary to § 2A3.1 captioned ''Application Notes'' is amended by inserting the following additional notes:

''6. If a victim was sexually abused by more than one participant, an upward departure may be warranted. See § 5K2.8 (Extreme Conduct).

''7. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted.''.

The Commentary to § 2A3.2 captioned ''Application Notes'' is amended by inserting the following additional note:

''4. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted.''.

The Commentary to § 2A3.3 captioned ''Application Note'' is amended by deleting ''Note'' and inserting in lieu thereof ''Notes''; and by inserting the following additional note:

''2. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted.''.

The Commentary to § 2A3.4 captioned ''Application Notes'' is amended by inserting the following additional note:

''5. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted.''.

Reason for Amendment: Section 40111 of the Violent Crime Control and Law Enforcement Act of 1994 doubles the authorized maximum term of imprisonment for defendants convicted of sexual abuse offenses who have been convicted previously of aggravated sexual abuse, sexual abuse, or aggravated sexual contact (18 U.S.C. 2247). Section 40111 also directs the Sentencing Commission to implement this provision by promulgating amendments, if appropriate, to the applicable sentencing guidelines. Although the Chapter Two sexual abuse guidelines do not provide for enhancement for repeat sex offenses, Chapter Four (Criminal History and Criminal Livelihood) does include a determination of the seriousness of the defendant's criminal record based upon prior convictions (§ 4A1.1). Section 4B1.1 (Career Offender) also provides substantially enhanced penalties for offenders who engage in a crime of violence (including forcible sexual offenses) or controlled substance trafficking offense, having been sentenced previously on two or more occasions for offenses of either type. Moreover, § 4A1.3 (Adequacy of Criminal History category) provides that an upward departure may be considered ''[i]f reliable information indicates that the criminal history category does not reflect the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes.'' This amendment strengthens the sexual offense guidelines by expressly listing as a basis for upward departure the fact that the defendant has a prior sentence for conduct similar to the instant sexual offense.

Section 40112 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to conduct a study and consider the adequacy of the guidelines for sexual offenses with respect to a number of factors. The provision also requires the preparation of a report to Congress analyzing federal rape sentences and obtaining comment from independent experts. See Report to Congress: Analysis of Penalties for Federal Rape Cases (March 13, 1995). The Commission found that, in general, the current guidelines provide appropriate penalties for these offenses. This amendment strengthens § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) in one respect by expressly listing as a basis for an upward departure the fact that a victim was sexually abused by more than one participant.

3. Amendment: Section 2B1.1(b) is amended by deleting subdivision (2); and by renumbering the remaining subdivisions, and any references thereto, accordingly.

Section 2B1.1 is amended by inserting the following additional subsection:

''(c) Cross Reference

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of such item was an object of the offense, or (B) the stolen property received, transported, transferred, transmitted, or possessed was a firearm, destructive device, explosive material, or controlled substance, apply § 2D1.1, § 2D2.1, § 2K1.3, or § 2K2.1, as appropriate, if the resulting offense level is greater than that determined above.''.

The Commentary to § 2B1.1 captioned ''Background'' is amended by deleting the fourth paragraph.

Reason for Amendment: This amendment addresses an inconsistency in guideline penalties between theft offenses involving the taking of firearms or controlled substances that are sentenced under § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Receiving, Transporting, Transferring, Transmitting, or Possessing Stolen Property) and similar offenses sentenced under § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy), § 2D2.1 (Unlawful Possession; Attempt or Conspiracy), § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition). It accomplishes this by providing a cross reference in § 2B1.1 directing the application of § 2D1.1, § 2D2.1, § 2K1.3, or § 2K2.1, as appropriate, if the resulting offense level is greater.

4. Amendment: Section 2B5.1(b) is amended by inserting the following additional subdivision:

''(3) If a dangerous weapon (including a firearm) was possessed in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.''.

The Commentary to § 2B5.1 captioned ''Application Notes'' is amended in Note 2 by deleting ''2B5.2'' and inserting in lieu thereof ''2F1.1''.

The Commentary to § 2B5.1 captioned ''Background'' is amended by inserting the following additional paragraph as the second paragraph:

'' Subsection (b)(3) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.''.

Section 2F1.1(b)(4) is amended by inserting ''(A)'' immediately after ''involved''; and by inserting ''or (B) possession of a dangerous weapon (including a firearm) in connection with the offense,'' immediately after ''injury,''.

The Commentary to § 2F1.1 captioned ''Background'' is amended by inserting the following additional paragraph as the sixth paragraph:

'' Subsection (b)(4)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.''.

Reason for Amendment: Section 110512 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to amend its sentencing guidelines to provide an appropriate enhancement for a defendant convicted of a felony under Chapter 25 (Counterfeiting and Forgery) of title 18, United States Code, if the defendant used or carried a firearm during and in relation to the offense. This amendment implements this directive in a somewhat broader form. In addition, it corrects an outdated reference in the Commentary to § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States).

5. Amendment: Section 2D1.1(b) is amended by deleting subdivision (1); by renumbering subdivision (2) as (3); and by inserting:

''(1) (Apply the greatest):

(A) If the defendant discharged a firearm, increase by 6 levels, but if the resulting offense level is less than level 24, increase to level 24.

(B) If the defendant brandished or otherwise used a dangerous weapon (including a firearm), increase by 4 levels, but if the resulting offense level is less than level 19, increase to level 19.

(C) If a dangerous weapon (including a firearm) was possessed, increase by 3 levels, but if the dangerous weapon was a firearm and the resulting offense level is less than level 18, increase to level 18.

(2) If the defendant possessed a firearm described in 26 U.S.C. 5845(a) or 18 U.S.C. 921(a)(30), increase by 2 levels.''.

Section 2D1.1(c)(1) is amended by deleting ''1.5 KG or more of Cocaine Base;''.

Section 2D1.1(c)(2) is amended by deleting ''At least 500 G but less than 1.5 KG of Cocaine Base;''.

Section 2D1.1(c)(3) is amended by deleting ''At least 150 G but less than 500 G of Cocaine Base;''.

Section 2D1.1(c)(4) is amended by deleting ''At least 50 G but less than 150 G of Cocaine Base;''.

Section 2D1.1(c)(5) is amended by deleting ''At least 35 G but less than 50 G of Cocaine Base;''.

Section 2D1.1(c)(6) is amended by deleting ''At least 20 G but less than 35 G of Cocaine Base;''.

Section 2D1.1(c)(7) is amended by deleting ''At least 5 G but less than 20 G of Cocaine Base;''.

Section 2D1.1(c)(8) is amended by deleting ''At least 4 G but less than 5 G of Cocaine Base;''.

Section 2D1.1(c)(9) is amended by deleting ''At least 3 G but less than 4 G of Cocaine Base;''.

Section 2D1.1(c)(10) is amended by deleting ''At least 2 G but less than 3 G of Cocaine Base;''.

Section 2D1.1(c)(11) is amended by deleting ''At least 1 G but less than 2 G of Cocaine Base;''.

Section 2D1.1(c)(12) is amended by deleting ''At least 500 MG but less than 1 G of Cocaine Base;''.

Section 2D1.1(c)(13) is amended by deleting ''At least 250 MG but less than 500 MG of Cocaine Base;''.

Section 2D1.1(c)(14) is amended by deleting ''Less than 250 MG of Cocaine Base;''.

Section 2D1.1(c) is amended by deleting:

'' 'Cocaine base,' for the purposes of this guideline, means 'crack.' 'Crack' is the street name for a form of cocaine base, usually prepared by processing cocaine hydrochloride and sodium bicarbonate, and usually appearing in a lumpy, rocklike form.'',

and inserting in lieu thereof:

'' 'Cocaine,' for the purposes of this guideline, includes cocaine hydrochloride, cocaine base, and crack cocaine.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in

Note 10 in the subdivision captioned ''Cocaine and Other Schedule I and II Stimulants'' by deleting:

''1 gm of Cocaine Base ('Crack') = 20 kg of marihuana''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 3 by deleting '' 'firearm' and 'dangerous weapon' '' and inserting in lieu thereof '' 'firearm,' 'dangerous weapon,' 'brandished,' and 'otherwise used' ''; and by inserting the following additional paragraph at the end:

''A 'firearm described in 18 U.S.C. 921(a)(30)' (pertaining to semiautomatic assault weapons) does not include a weapon exempted under the provisions of 18 U.S.C. 922(v)(3). A 'firearm described in 26 U.S.C. 5845(a)' is discussed in the Commentary to § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition).''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 13 by deleting ''(b)(2)(B)'' and inserting in lieu thereof ''(b)(3)(B)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by inserting the following additional notes:

''20. Under subsections (b)(1) (A), (B) and (b)(2), the defendant is accountable for his own conduct and the conduct of others that he aided, abetted, counseled, commanded, induced, procured, or willfully caused. If a firearm is discharged by a participant in the same vehicle as the defendant, or otherwise in close proximity to the defendant, there shall be a rebuttable presumption that the defendant aided or abetted, counseled, commanded, or induced the discharge of the firearm.

''21. If the offense resulted in bodily injury to any victim, an upward departure may be warranted.''.

The Commentary to § 2D1.1 captioned ''Background'' is amended in the fifth paragraph by deleting ''(b)(2)'' and inserting in lieu thereof ''(b)(3)''.

Section 2D2.1 is amended in subsection (a)(1) by deleting '', an analogue of these, or cocaine base'' and inserting in lieu thereof ''(or an analogue thereof)''.

Section 2D2.1 is amended by deleting subsection (b).

The Commentary to § 2D2.1 captioned ''Background'' is amended by deleting the second paragraph.

Reason for Amendment: This amendment further implements section 280006 of the Violent Crime Control and Law Enforcement Act of 1994 in which Congress directed the Commission to study federal sentencing policy as it relates to possession and distribution of all forms of cocaine, specifically including the differences in penalty levels that apply to powder cocaine and crack cocaine. The Commission conducted public hearings, received written comment, and conducted its own analyses of the relevant research and of the Commission's extensive database on cocaine sentences imposed in the federal courts. The results of this study are contained in the Special Report to Congress: Cocaine and Federal Sentencing Policy (February 1995).

This amendment specifically responds to the Congressional directive to make recommendations for retention or modification of current cocaine penalties. The Commission is recommending separately that Congress eliminate the differential treatment of crack and powder cocaine in the mandatory minimum penalties found in current statutes. With this amendment, the Commission also makes changes in the sentencing guidelines that it believes will better accomplish the purposes of sentencing and will do so more fairly than the current guidelines. This amendment equalizes sentences for offenses involving similar amounts of crack cocaine and powder cocaine at the level currently provided for powder cocaine. It also increases punishment for all drug offenses that involve firearms or other dangerous weapons, and authorizes an upward departure for bodily injury.

In public comment and testimony received by the Commission, several problems with the current penalty differential between crack and powder cocaine were cited. Critics questioned whether lengthier penalties for crack are justified by differences between the two forms of cocaine. Also, many commentators and a study issued by the U.S. Department of Justice, Bureau of Justice Statistics, noted that the discrepancy in the sentence lengths for crack and powder cocaine has been a major factor in a growing gap between the average sentence imposed on Whites and on minorities in the federal courts. (See Sentencing in the Federal Courts: Does Race Matter?, November 1993.)

To evaluate current cocaine sentencing policy, the Commission reviewed the legislative history of the relevant penalty provisions and the goals that Congress has established for cocaine sentencing. On the question of the impact of current penalties on Blacks, the Commission concluded that no evidence supports a finding that racial bias or animus undergirded the current penalty structure. However, the Commission was deeply concerned that almost ninety percent of offenders convicted of crack cocaine offenses in the federal courts are Black. The Commission concluded that it is important that sufficient policy bases exist to justify a penalty differential that has a severe impact on a particular minority group.

For reasons discussed below, the Commission concluded that sufficient policy bases for the current penalty differential do not exist. Instead of differential treatment of crack and powder cocaine defendants based solely on the form of the drug involved in the offense, the Commission concluded that fairer sentencing would result from guideline enhancements that are targeted to the particular harms that are associated with some, but not all, crack cocaine offenses. Harm-specific guideline enhancements will better punish the most culpable offenders and protect the public from the most dangerous offenders, while avoiding blanket increases for all offenders involved with the crack form of cocaine.

As described in the Special Report, the 100-to-1 quantity ratio was established before the guideline system was in effect and before Congress could know how many of the harms associated with crack cocaine offenses would be captured by other guideline sentence enhancements. For example, the guidelines ensure lengthier imprisonment for leaders and managers of drug distribution offenses (§ 3B1.1), for the sale of controlled substances to juveniles or pregnant women (§ 2D1.2), for the sale of controlled substances in protected locations (§ 2D1.2), for the use of juveniles in controlled substance offenses (§ 2D1.2), and for repeat offenders (Chapter 4). For offenses involving death, a cross-reference to the first-degree murder guideline is provided (§ 2D1.1). Consequently, to the extent that these other guideline provisions take into account the increased harms associated with some crack offenses, the Commission has concluded that the higher offense levels based solely on the form of the drug that are found in the current drug quantity table should be reduced.

The Commission also has determined that, given the increased dangers posed by the possession and use of firearms or other dangerous weapons in connection with controlled substance offenses (including crack cocaine offenses), the enhancements provided by the guidelines for these factors should be increased. Consequently, the amendment increases the enhancement for possession of a firearm or other dangerous weapon from two to three levels, with a minimum offense level of 18 for possession of a firearm. A new four-level adjustment for brandishing or otherwise using a dangerous weapon

and a six-level adjustment for discharging a firearm are added. Additionally, a two-level enhancement for possession of a firearm of the type described in 26 U.S.C. 5845(a) or 18 U.S.C. 921(a)(30) is added (e.g., a machine gun, sawed-off shotgun, or a semi-automatic assault weapon). A new application note expressly lists bodily injury to any victim as a grounds for an upward departure.

With guideline enhancements that are targeted to factors associated with some crack cocaine offenses, the Commission concluded that the penalty differential based solely on the form of the drug should be eliminated. Crack and powder cocaine are pharmacologically the same drug. Both are dangerous and have a serious potential for abuse. Cocaine is imported and distributed in powder form, meaning that those persons highest in the distribution chain—whom the Commission considers the most culpable and the most responsible for the nation's cocaine problem—deal only in powder. Crack is manufactured from powder cocaine, generally near the point of retail sale, using a simple conversion process.

This cocaine distribution pattern, in combination with the current penalty differential, has resulted in cases in which retail crack dealers sometimes get longer sentences than the wholesale powder distributors who supply them. Under this amendment, the drug trafficking guidelines (§§ 2D1.1, 2D1.2, 2D1.5) will provide for the same significant punishment for crack distributors that is currently provided for distributors of like quantities of powder cocaine. The amended guideline will base punishment on the amount of cocaine involved and other associated, systematic harms, not on the form of cocaine. Hence, large-scale powder or crack cocaine suppliers will get longer sentences than small-scale street dealers. Conforming changes are also made in the simple possession guideline (§ 2D2.1).

The Commission is aware that an increase in cocaine addiction has been attributed to crack cocaine. Addiction is more likely when a drug is administered, as is crack, through smoking rather than through nasal insufflation (snorting). However, the Commission determined that this is not a reliable basis for establishing longer penalties for crack cocaine, because powder cocaine may be injected and injection is even more likely to lead to addiction than is smoking.

After careful consideration, the Commission concluded that increased penalties are also not an appropriate response to concerns about social maladies that have been associated with crack, such as health problems and parental neglect among user groups. The Commission was unable to establish that these social problems result from the drug itself rather than from the disadvantaged social and economic environment in which the drug often is used. Moreover, these problems are not unique to crack cocaine but are associated with any serious drug or alcohol abuse. The Commission believes that increased punishment for crack cocaine solely because it is more commonly used by members of disadvantaged groups is not appropriate. Nor does the fact that crack cocaine is typically sold in smaller amounts, which may make it more readily available among lower-income groups, justify increased punishment compared to a form of the drug that is more commonly sold in amounts available only to more affluent persons.

After consideration of the factors in the Special Report to Congress and the purposes of sentencing set forth in 18 U.S.C. 3553, the Commission has concluded that the guideline provisions, as amended, will better take into account the increased harms associated with some crack cocaine offenses and, thus, the different offense levels based solely on the form of cocaine are not required.

6. Amendment: Section 2D1.1(b) is amended by inserting the following additional subdivision:

''(4) If the object of the offense was the distribution of a controlled substance in a prison, correctional facility, or detention facility, increase by 2 levels.''.

Section 2D2.1 is amended by inserting the following new subsection:

''(b) Cross Reference

(1) If the offense involved possession of a controlled substance in a prison, correctional facility, or detention facility, apply § 2P1.2 (Providing or Possessing Contraband in Prison).''.

Reason for Amendment: Section 90103 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to amend the guidelines to provide an adequate enhancement for an offense under 21 U.S.C. 841 that involves distributing a controlled substance in a federal prison or detention facility. This amendment addresses this directive by adding a two-level enhancement to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) for an offense involving a prison or detention facility, similar to the two-level increase provided for other protected locations in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy).

Section 90103 also directs the Commission to amend the guidelines to provide an appropriate enhancement for an offense of simple possession of a controlled substance under 21 U.S.C. 844 that occurs in a federal prison or detention facility. This amendment addresses this directive by providing a cross reference from § 2D2.1 (Unlawful Possession; Attempt or Conspiracy) to § 2P1.2 (Providing or Possessing Contraband in Prison) in such cases.

7. Amendment: Section 2D1.1(b) is amended by inserting the following additional subdivision:

''(5) If the defendant meets the criteria set forth in subdivisions (1)–(5) of § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) and the offense level determined above is level 26 or greater, decrease by 2 levels.''.

Section 5C1.2 is repromulgated without change.

Reason for Amendment: Section 80001(b) of the Violent Crime Control and Law Enforcement Act of 1994 (the ''Safety Valve'' provision) directs the Commission to promulgate guidelines and policy statements to implement section 80001(a) (providing an exception to otherwise applicable statutory mandatory minimum sentences for certain defendants convicted of specified drug offenses). Pursuant to this provision, the Commission promulgated § 5C1.2 (Limitation on Applicability of Statutory Minimum Sentences in Certain Cases) as an emergency amendment effective September 23, 1994. Under the terms of the congressionally-granted authority, this amendment is temporary unless repromulgated in the next amendment cycle under regularly applicable amendment procedures. See Public Law No. 100–182, section 21, set forth as an editorial note under 28 U.S.C. 994. This amendment repromulgates § 5C1.2, as set forth in the Guidelines Manual effective November 1, 1994. In addition, this amendment adds a new subsection to § 2D1.1 to implement this provision by providing a two-level decrease in offense level for cases meeting the criteria set forth in § 5C1.2(1)–(5).

8. Amendment: Section 2D1.1(c) is amended in the fifth note immediately following the Drug Quantity Table by deleting ''if the offense involved (A) 50 or more marihuana plants, treat each plant as equivalent to 1 KG of marihuana; (B) fewer than 50 marihuana plants,'', and by inserting '', regardless of sex,'' immediately following ''plant''. The Commentary to § 2D1.1 captioned ''Background'' is amended in the fourth

paragraph by deleting ''In cases involving fifty or more marihuana plants, an equivalency of one plant to one kilogram of marihuana is derived from the statutory penalty provisions of 21 U.S.C. 841(b)(1)(A), (B), and (D). In cases involving fewer than fifty plants, the statute is silent as to the equivalency. For cases involving fewer than fifty'' and inserting in lieu thereof ''For marihuana''; and by deleting '', in the case of fewer than fifty marihuana plants,''.

Reason for Amendment: For offenses involving 50 or more marihuana plants, the guidelines currently use an equivalency of one plant = one kilogram of marihuana, reflecting the quantities associated with the five- and ten-year mandatory minimum penalties in 21 U.S.C. 841. For offenses involving fewer than 50 marihuana plants, the guidelines use an equivalency of one plant = 100 grams of marihuana, unless the weight of the actual marihuana is greater. In actuality, a marihuana plant does not produce a yield of one kilogram of marihuana. The one plant = 100 grams of marihuana equivalency used by the Commission for offenses involving fewer than 50 marihuana plants was selected as a reasonable approximation of the actual average yield of marihuana plants taking into account (1) studies reporting the actual yield of marihuana plants (37.5 to 412 grams depending on growing conditions); (2) that all plants regardless of size are counted for guideline purposes while, in actuality, not all plants will produce useable marihuana (e.g., some plants may die of disease before maturity, and when plants are grown outdoors some plants may be consumed by animals); and (3) that male plants, which are counted for guideline purposes, are frequently culled because they do not produce the same quality of marihuana as do female plants. To enhance fairness and consistency, this amendment adopts the equivalency of 100 grams per marihuana plant for all guideline determinations.

9. Amendment: Section 2D1.1(c)(10) is amended by deleting:

''20 KG or more of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids); 40,000 or more units of Anabolic Steroids.'',

and by inserting in lieu thereof:

''40,000 or more units of Schedule I or II Depressants or Schedule III substances.''.

Section 2D1.1(c)(11) is amended by deleting:

''At least 10 KG but less than 20 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 20,000 but less than 40,000 units of Anabolic Steroids.'',

and by inserting in lieu thereof:

''At least 20,000 but less than 40,000 units of Schedule I or II Depressants or Schedule III substances.''.

Section 2D1.1(c)(12) is amended by deleting:

''At least 5 KG but less than 10 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 10,000 but less than 20,000 units of Anabolic Steroids.'',

and by inserting in lieu thereof:

''At least 10,000 but less than 20,000 units of Schedule I or II Depressants or Schedule III substances.''.

Section 2D1.1(c)(13) is amended by deleting:

''At least 2.5 KG but less than 5 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 5,000 but less than 10,000 units of Anabolic Steroids.'',

and by inserting in lieu thereof:

''At least 5,000 but less than 10,000 units of Schedule I or II Depressants or Schedule III substances.''.

Section 2D1.1(c)(14) is amended by deleting:

''At least 1.25 KG but less than 2.5 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 2,500 but less than 5,000 units of Anabolic Steroids; 20 KG or more of Schedule IV substances.'',

and inserting in lieu thereof:

''At least 2,500 but less than 5,000 units of Schedule I or II Depressants or Schedule III substances.

40,000 or more units of Schedule IV substances.''.

Section 2D1.1(c)(15) is amended by deleting:

''At least 500 G but less than 1.25 KG of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 1,000 but less than 2,500 units of Anabolic Steroids;

At least 8 KG but less than 20 KG of Schedule IV substances.'',

and inserting in lieu thereof:

''At least 1,000 but less than 2,500 units of Schedule I or II Depressants or Schedule III substances;

At least 16,000 but less than 40,000 or more units of Schedule IV substances.''.

Section 2D1.1(c)(16) is amended by deleting:

''At least 125 G but less than 500 G of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

At least 250 but less than 1,000 units of Anabolic Steroids;

At least 2 KG but less than 8 KG of Schedule IV substances; 20 KG or more of Schedule V substances.'',

and inserting in lieu thereof:

''At least 250 but less than 1,000 units of Schedule I or II Depressants or Schedule III substances;

At least 4,000 but less than 16,000 units of Schedule IV substances;

At least 40,000 or more units of Schedule V substances.''.

Section 2D1.1(c)(17) is amended by deleting:

''Less than 125 G of Secobarbital (or the equivalent amount of other Schedule I or II Depressants) or Schedule III substances (except Anabolic Steroids);

Less than 250 units of Anabolic Steroids;

Less than 2 KG of Schedule IV substances;

Less than 20 KG of Schedule V substances.'',

and inserting in lieu thereof:

''Less than 250 units of Schedule I or II Depressants or Schedule III substances;

Less than 4,000 units of Schedule IV substances;

Less than 40,000 units of Schedule V substances.''.

Section 2D1.1(c) is amended in the notes following the Drug Quantity Table by inserting the following additional note as the sixth note:

''In the case of Schedule I or II Depressants, Schedule III substances (except anabolic steroids), Schedule IV substances, and Schedule V substances, one 'unit' means one pill, capsule, or tablet. If the substance is in liquid form, one 'unit' means 0.5 gms.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10d by deleting ''28 kilograms'' and inserting in lieu thereof ''56,000 units''; by deleting ''50 kilograms'' and inserting in lieu thereof ''100,000 units''; and by deleting ''100 kilograms'' and inserting in lieu thereof ''200,000 units''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the Drug Equivalency Tables in the subsection captioned ''Secobarbital and Other Schedule I or II Depressants'' by deleting '' Secobarbital and Other''; and by deleting:

''1 gm of Amobarbital = 2 gm of marihuana
1 gm of Glutethimide = 0.4 gm of marihuana
1 gm of Methaqualone = 0.7 gm of marihuana
1 gm of Pentobarbital = 2 gm of marihuana
1 gm of Secobarbital = 2 gm of marihuana'', and inserting in lieu thereof:

''1 unit of a Schedule I or II Depressant = 1 gm of marihuana''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the Drug Equivalency Tables in the subsection captioned ''Schedule III Substances'' by deleting:

''1 gm of a Schedule III Substance (except anabolic steroids) = 2 gm of marihuana

1 unit of anabolic steroids = 1 gm of marihuana'',

and inserting in lieu thereof:

''1 unit of a Schedule III Substance = 1 gm of marihuana''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the Drug Equivalency Tables in the subsection captioned ''Schedule IV Substances'' by deleting:

''1 gm of a Schedule IV Substance = 0.125 gm of marihuana'',

and inserting in lieu thereof:

''1 unit of a Schedule IV Substance = 0.0625 gm of marihuana''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the Drug Equivalency Tables in the subsection captioned ''Schedule V Substances'' by deleting:

''1 gm of a Schedule V Substance = 0.0125 gm of marihuana'',

and inserting in lieu thereof:

''1 unit of a Schedule V Substance = 0.00625 gm of marihuana''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 11 in the ''Typical Weight Per Unit Table'' by deleting the caption ''Depressants''; and by deleting ''Methaqualone* 300 mg''.

Reason for Amendment: This amendment modifies the determination of the base offense level with respect to Schedule I and II Depressants and Schedule III, IV, and V controlled substances by applying the Drug Quantity Table according to the number of pills, capsules, or tablets rather than by the gross weight of the pills, capsules, or tablets. Schedule I and II Depressants and Schedule III, IV, and V substances are almost always in pill, capsule, or tablet form. The current guidelines use the total weight of the pill, tablet, or capsule containing the controlled substance. This method leads to anomalies because the weight of most pills is determined primarily by the filler rather than the controlled substance. Thus, heavy pills lead to higher offense levels even though there is little or no relationship between gross weight and the potency of the pill. Applying the Drug Quantity Table according to the number of pills will both simplify guideline application and more fairly assess the scale and seriousness of the offense.

10. Amendment: Section 2D1.1(c) is amended in the notes following the Drug Quantity Table by inserting the following additional notes at the end:

''Hashish, for the purposes of this guideline, means a resinous substance of cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 CFR § 1308.11(d)(25)), (ii) at least two of the following: cannabinol, cannabidiol, or cannabichromene, and (iii) fragments of plant material (such as cystolith fibers).

Hashish oil, for the purposes of this guideline, means a preparation of the soluble cannabinoids derived from cannabis that includes (i) one or more of the tetrahydrocannabinols (as listed in 21 CFR 1308.11(d)(25)) and (ii) at least two of the following: cannabinol, cannabidiol, or cannabichromene, and (iii) is essentially free of plant material (e.g., plant fragments). Typically, hashish oil is a viscous, dark colored oil, but it can vary from a dry resin to a colorless liquid.''.

Section 2D1.1(c) is amended by inserting ''Notes to Drug Quantity Table:'' immediately following the asterisk at the beginning of the notes to the Drug Quantity Table; and by inserting a letter designation immediately before each note in alphabetical order beginning with ''(A)''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 1 by inserting the following additional paragraph at the end:

''Similarly, in the case of marihuana having a moisture content that renders the marihuana unsuitable for consumption without drying (this might occur, for example, with a bale of rain-soaked marihuana or freshly harvested marihuana that had not been dried), an approximation of the weight of the marihuana without such excess moisture content is to be used.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the Drug Equivalency Table in the subdivision captioned ''Schedule I or II Opiates'' by inserting at the end:

''1 gm of Levo-alpha-acetylmethadol (LAAM)= 3 kg of marihuana''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 10 in the Drug Equivalency Table in the subdivision captioned ''Cocaine and Other Schedule I and II Stimulants'' by deleting:

''1 gm of L-Methamphetamine/Levo-methamphetamine/L-Desoxyephedrine = 40 gm of marihuana'';

and inserting in lieu thereof:

''1 gm of Khat = .01 gm of marihuana''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended in Note 12 by deleting:

''In an offense involving negotiation to traffic in a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount. However, where the court finds that the defendant did not intend to produce and was not reasonably capable of producing the negotiated amount, the court shall exclude from the guideline calculation the amount that it finds the defendant did not intend to produce and was not reasonably capable of producing.'',

and by inserting in lieu thereof:

''In an offense involving an agreement to sell a controlled substance, the agreed-upon quantity of the controlled substance shall be used to determine the offense level unless the sale is completed and the amount delivered more accurately reflects the scale of the offense. For example, a defendant agrees to sell 500 grams of cocaine, the transaction is completed by the delivery of the controlled substance—actually 480 grams of cocaine, and no further delivery is scheduled. In this example, the amount delivered more accurately reflects the scale of the offense. In contrast, in a reverse sting, the agreed-upon quantity of the controlled substance would more accurately reflect the scale of the offense because the amount actually delivered is controlled by the government, not by the defendant. If, however, the defendant establishes that he or she did not intend to provide, or was not reasonably capable of providing, the agreed-upon quantity of the controlled substance, the court shall exclude from the offense level determination the amount of controlled substance that the defendant establishes that he or she did not intend to provide or was not reasonably capable of providing.''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by inserting the following additional note:

''22. For purposes of the guidelines, a 'plant' is an organism having leaves and a readily observable root formation (e.g., a marihuana cutting having roots, a rootball, or root hairs is a marihuana plant).''.

Reason for Amendment: This is a six-part amendment. First, this amendment adds definitions of hashish and hashish oil to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) in the notes following the Drug Quantity Table. Currently, these terms are not defined by statute or in the guidelines, leading to litigation as to which substances are to be classified as hashish or hashish oil, as opposed to marihuana. See United States v. Gravelle, 819 F. Supp. 1076 (S.D. Fla. 1993); United States v. Schultz, 810 F. Supp. 230 (S.D. Ohio 1992).

Second, this amendment clarifies the treatment of marihuana that has a moisture content sufficient to render it unusable without drying (e.g., a bale of marihuana left in the rain or recently harvested marihuana that has not had time to dry). In such cases, using the weight of the wet marihuana can increase the offense level for a factor that bears no relationship to the scale of the offense or the marketable form of the marihuana. Prior to the effective date of the 1993 amendments, two circuits had approved weighing wet marihuana despite the fact that the marihuana was not in a usable form. United States v. Pinedo-Montoya, 966 F.2d 591 (10th Cir. 1992); United States v. Garcia, 925 F.2d 170 (7th Cir. 1991). Although Application Note 1 in the Commentary to § 2D1.1, effective November 1, 1993 (pertaining to unusable parts of a mixture or substance) should produce the appropriate result because marihuana must be dried before being used, this type of case is sufficiently distinct to warrant a specific reference in this application note to ensure correct application of the guideline.

Third, this amendment addresses the issue of what constitutes a marihuana plant. Several circuits have confronted the issue of when a cutting from a marihuana plant becomes a ''plant.'' The appellate courts generally have held that the term ''plant'' should be defined by ''its plain and ordinary dictionary meaning * * *. [A] marihuana 'plant' includes those cuttings accompanied by root balls.'' *United States* v. *Edge,* 989 F.2d 871, 878 (6th Cir. 1993) (quoting *United States* v. *Eves,* 932 F.2d 856, 860 (10th Cir. 1991), appeal after remand 30 F.3d 134 (6th Cir. 1994)). See also *United States* v. *Malbrough,* 922 F.2d 458, 465 (8th Cir. 1990) (acquiescing in the district court's apparent determination that certain marihuana cuttings that did not have their own ''root system'' should not be counted as plants), cert. denied, 501 S. Ct. 1258 (1991); *United States* v. *Carlisle,* 907 F.2d 94, 96 (9th Cir. 1990)(finding that cuttings were plants where each cutting had previous degrees of root formation not clearly erroneous); *United States* v. *Angell,* 794 F. Supp. 874, 875 (D. Minn. 1990) (refusing to count as plants marihuana cuttings that have no visible root structure), aff'd in part and rev'd in part, 11 F.3d 806 (8th Cir.), cert. denied, 114 S. Ct. 3747 (1994); *United States* v. *Fitol,* 733 F. Supp. 1312, 1316 (D. Minn. 1990) (''individual cuttings, planted with the intent of growing full size plants, and which had grown roots, are 'plants' both within common parlance and within Section 841(b)''); *United States* v. *Speltz,* 733 F. Supp. 1311, 1312 (D. Minn. 1990) (small marihuana plants, e.g., cuttings with roots, are nonetheless still marihuana plants), aff'd. 938 F.2d 188 (8th Cir. 1991). Because this issue arises frequently, this amendment adds an application note to the Commentary of § 2D1.1 setting forth the definition of a plant for guidelines purposes.

Fourth, this amendment provides equivalencies for two additional controlled substances: (1) Khat, and (2) levo-alpha-acetylmethadol (LAAM) in the Drug Equivalency Tables in the Commentary to § 2D1.1.

Fifth, this amendment deletes the distinction between d- and l-methamphetamine in the Drug Equivalency Tables in the Commentary to § 2D1.1. L-methamphetamine, which is a rather weak form of methamphetamine, is rarely seen and is not made intentionally, but rather results from a botched attempt to produce d-methamphetamine. Under this amendment, l-methamphetamine would be treated the same as d-methamphetamine (i.e., as if an attempt to manufacture or distribute d-methamphetamine). Currently, unless the methamphetamine is specifically tested to determine its form, litigation can result over whether the methamphetamine is l-methamphetamine or d-methamphetamine. In addition, there is another form of methamphetamine (dl-methamphetamine) that is not listed in the Drug Equivalency Table. The listing of l-methamphetamine as a separate form of methamphetamine has led to litigation as to how dl-methamphetamine should be treated. In *United States* v. *Carroll,* 6 F.3d 735 (11th Cir. 1993), cert. denied, 114 S. Ct. 1234 (1994), a case in which the Eleventh Circuit held that dl-methamphetamine should be treated as d-methamphetamine, the majority and dissenting opinions both point out the complexity engendered by the current distinction between d- and l-methamphetamine. Under this amendment, all forms of methamphetamine are treated alike, thereby simplifying guideline application.

Sixth, this amendment revises the Commentary to § 2D1.1 to provide that in a case involving negotiation for a quantity of a controlled substance, the negotiated quantity is used to determine the offense level unless the completed transaction establishes a different quantity, or the defendant establishes that he or she was not reasonably capable of producing the negotiated amount or otherwise did not intend to produce that amount. Disputes over the interpretation of this application note have produced much litigation. See, e.g., *United States* v. *Tillman,* 8 F.3d 17 (11th Cir. 1993); *United States* v. *Smiley,* 997 F.2d 475 (8th Cir. 1993); *United States* v. *Barnes,* 993 F.2d 680 (9th Cir. 1993), cert. denied, 115 S. Ct. 96 (1994); *United States* v. *Rodriguez,* 975 F.2d 999 (3d Cir. 1992); *United States* v. *Christian,* 942 F.2d 363 (6th Cir. 1991), cert. denied, 502 U.S. 1045 (1992); *United States* v. *Richardson,* 939 F.2d 135 (4th Cir.), 502 U.S. 987 (1991); *United States* v. *Ruiz,* 932 F.2d 1174 (7th Cir.), cert. denied, 502 U.S. 849 (1991); *United States* v. *Bradley,* 917 F.2d 601 (1st Cir. 1990).

11. Amendment: Section 2D1.11 and the commentary thereto is amended by deleting ''listed precursor'' wherever it appears and inserting in lieu thereof ''list I''; by deleting ''listed essential'' wherever it appears and inserting in lieu thereof ''list II''; and by deleting ''Precursor Chemical Equivalency Table'' wherever it appears and inserting in lieu thereof ''List I Chemical Equivalency Table''.

Section 2D1.11(d) is amended by deleting all lines referencing d-lysergic acid.

The Chemical Quantity Table in § 2D1.11(d) is amended in subdivisions (1)–(9) by adding the following list I chemicals (formerly Listed Precursor Chemicals) in the appropriate place in alphabetical order by subdivision as follows:

(1) ''17.8 KG or more of Benzaldehyde;'', ''12.6 KG or more of Nitroethane;'',

(2) ''At least 5.3 KG but less than 17.8 KG of Benzaldehyde;'', ''At least 3.8 KG but less than 12.6 KG of Nitroethane;'',

(3) ''At least 1.8 KG but less than 5.3 KG of Benzaldehyde;'', ''At least 1.3 KG but less than 3.8 KG of Nitroethane;'',

(4) ''At least 1.2 KG but less than 1.8 KG of Benzaldehyde;'', ''At least 879 G but less than 1.3 KG of Nitroethane;'',

(5) ''At least 712 G but less than 1.2 KG of Benzaldehyde;'',
''At least 503 G but less than 879 G of Nitroethane;'',
(6) ''At least 178 G but less than 712 G of Benzaldehyde;'',
''At least 126 G but less than 503 G of Nitroethane;'',
(7) ''At least 142 G but less than 178 G of Benzaldehyde;'',
''At least 100 G but less than 126 G of Nitroethane;'',
(8) ''At least 107 G but less than 142 G of Benzaldehyde;'',
''At least 75 G but less than 100 G of Nitroethane;'',
(9) ''Less than 107 G of Benzaldehyde;'',
''Less than 75 G of Nitroethane;'';

and by adding the following chemicals, in the appropriate place in alphabetical order, to the List I Chemical Equivalency Table:

''1 gm of Benzaldehyde** = 1.124 gm of Ephedrine'',
''1 gm of Nitroethane** = 1.592 gm of Ephedrine''.

Section 2D1.11(d) is amended in the notes following the Chemical Quantity Table by deleting Note (A) and inserting in lieu thereof:

''(A) The List I Chemical Equivalency Table provides a method for combining different precursor chemicals to obtain a single offense level. In a case involving two or more list I chemicals used to manufacture different controlled substances or to manufacture one controlled substance by different manufacturing processes, convert each to its ephedrine equivalency from the table below, add the quantities, and use the Chemical Quantity Table to determine the base offense level. In a case involving two or more list I chemicals used together to manufacture a controlled substance in the same manufacturing process, use the quantity of the single list I chemical that results in the greatest base offense level.'';

and by deleting the first paragraph of Note D and inserting in lieu thereof:

''In a case involving ephedrine tablets, use the weight of the ephedrine contained in the tablets, not the weight of the entire tablets, in calculating the base offense level.''.

Section 2D1.11(d) is amended by designating the List I Chemical Equivalency Table (formerly the Precursor Chemical Equivalency Table) as Note ''(E)''.

Section 2D1.11(d) is amended in the List I Chemical Equivalency Table (formerly the Precursor Chemical Equivalency Table) by inserting ''**'' immediately after each of the following substances: Ethylamine, N-Methylephedrine, N-Methylpseudoephedrine, Norpseudoephedrine, Phenylpropanolamine, Pseudoephedrine, and 3,4-Methylenedioxyphenyl-2-propanone.

Section 2D1.11(d) is amended in the note following the List I Chemical Equivalency Table (formerly the Precursor Chemical Equivalency Table) designated by two asterisks by deleting ''both hydriodic acid and ephedrine'' and inserting in lieu thereof:

''(A) hydriodic acid and one of the following: ephedrine, N-methylephedrine, N-methylpseudoephedrine, norpseudoephedrine, phenylpropanolamine, or pseudoephedrine; or (B) ethylamine and 3,4-methylenedioxyphenyl-2-propanone; or (C) benzaldehyde and nitroethane,''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended in Note 3 by deleting ''3, 4 methylenedioxphenyl-2-propanone'' wherever it appears and inserting in lieu thereof in each instance ''methylamine''.

The Commentary to § 2D1.11 captioned ''Application Notes'' is amended by deleting Note 4 and inserting in lieu thereof:

''4. When two or more list I chemicals are used together in the same manufacturing process, calculate the offense level for each separately and use the quantity that results in the greatest base offense level. In any other case, the quantities should be added together (using the List I Chemical Equivalency Table) for the purpose of calculating the base offense level.

Examples:

(a) The defendant was in possession of five kilograms of ephedrine and three kilograms of hydriodic acid. Ephedrine and hydriodic acid typically are used together in the same manufacturing process to manufacture methamphetamine. Therefore, the base offense level for each listed chemical is calculated separately and the list I chemical with the higher base offense level is used. Five kilograms of ephedrine result in a base offense level of 24; 300 grams of hydriodic acid result in base offense level of 14. In this case, the base offense level would be 24.

(b) The defendant was in possession of five kilograms of ephedrine and two kilograms of phenylacetic acid. Although both of these chemicals are used to manufacture methamphetamine, they are not used together in the same manufacturing process. Therefore, the quantity of phenylacetic acid should be converted to an ephedrine equivalency using the List I Chemical Equivalency Table and then added to the quantity of ephedrine. In this case, the two kilograms of phenylacetic acid convert to two kilograms of ephedrine (see List I Chemical Equivalency Table), resulting in a total equivalency of seven kilograms of ephedrine.''.

The Commentary to § 2D1.11 captioned ''Background'' is amended in the second sentence by deleting ''Listed precursor'' and inserting in lieu thereof ''List I''; by deleting ''critical to the formation'' and inserting in lieu thereof ''important to the manufacture''; and by inserting ''usually'' immediately before ''become''.

The Commentary to § 2D1.11 captioned ''Background'' is amended in the last sentence by deleting ''Listed essential'' and inserting in lieu thereof ''List II''; by inserting ''used as'' immediately following ''generally''; and by deleting '', and do not become part of the finished product''.

The Commentary to § 2D1.1 captioned ''Application Notes'' is amended by deleting Note 14; and by renumbering the remaining notes accordingly.

Reason for Amendment: The Domestic Chemical Diversion Act of 1993, Public Law 103–200, 107 Stat. 2333, changed the designations of the listed chemicals from ''listed precursor chemicals'' and ''listed essential chemicals'' to ''list I chemicals'' and ''list II chemicals,'' respectively. Section 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy) currently refers to ''listed precursor chemicals'' and ''listed essential chemicals.'' This amendment conforms § 2D1.11 to these statutory changes.

The Act also adds pills containing ephedrine as a list I chemical. Ephedrine itself is a list I chemical under 21 U.S.C. 802(34). Pills containing ephedrine previously were not covered by the statute and thus legally could be purchased ''over the counter.'' Purchases of these pills were sometimes made in large quantities and the pills crushed and processed to extract the ephedrine (which can be used to make methamphetamine). Unlike ephedrine, which is purchased from a chemical company and is virtually 100 percent pure, these tablets contain a substantially lower percentage of ephedrine (about 25 percent). To avoid unwarranted disparity, this amendment adds a note to § 2D1.11 providing that the amount of actual ephedrine contained in a pill is to be used in determining the offense level.

In addition, the Act removes three chemicals from, and adds two others to, the listed chemicals controlled under the Controlled Substances Act. Two of

the chemicals removed from the list are not currently listed in § 2D1.11 because the Commission was aware that they are not used in the manufacture of any controlled substance. The third chemical removed from the list, d-lysergic acid, was listed both as a listed chemical in § 2D1.11 and as a controlled substance in § 2D1.1. This amendment conforms § 2D1.11 by deleting all references to d-lysergic acid. The two chemicals added as listed chemicals are benzaldehyde and nitroethane. Both of these chemicals are used to make methamphetamine. The base offense levels for listed chemicals in § 2D1.11 are determined by reference to the most common controlled substance the chemical is used to manufacture; consequently, this amendment adds these chemicals to the Chemical Quantity Table based on information provided by the Drug Enforcement Administration regarding their use in the production of methamphetamine.

A number of the chemicals in the Chemical Quantity Table are used in the same process to make a controlled substance. Currently, a note at the end of the Precursor Chemical Equivalency Table addresses this situation for hydriodic acid and ephedrine. This amendment expands this note to cover other chemicals that similarly are used together.

Finally, the amendment corrects the Commentary to § 2D1.11 with respect to an example of a listed chemical that is used with P2P to manufacture methamphetamine.

12. Amendment: Section 2D1.12(a) is amended by inserting ''(Apply the greater)'' immediately after ''Base Offense Level''; and by deleting ''12'' and inserting in lieu thereof:

''(1) 12, if the defendant intended to manufacture a controlled substance or knew or believed the prohibited equipment was to be used to manufacture a controlled substance; or

(2) 9, if the defendant had reasonable cause to believe the prohibited equipment was to be used to manufacture a controlled substance.''.

Reason for Amendment: The Domestic Chemical Diversion Act of 1993, Public Law 103–200, 107 Stat. 2333, broadens the prohibition in 21 U.S.C. 843(a) to cover possessing, manufacturing, distributing, exporting, or importing three-neck, round-bottom flasks, tableting machines, encapsulating machines, or gelatin capsules having reasonable cause to believe they will be used to manufacture a controlled substance. Section 2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment; Attempt or Conspiracy) applies to this conduct. Consistent with the treatment of similar conduct under §§ 2D1.11(b)(2) and 2D1.13(b)(2), this amendment provides an alternative base offense level in § 2D1.12 to address the case in which the defendant had reasonable cause to believe, but not actual knowledge or belief, that the equipment was to be used to manufacture a controlled substance.

13. Amendment: The Introductory Commentary to Chapter Two, Part H, Subpart I, and §§ 2H1.1, 2H1.3, 2H1.4, and 2H1.5 are deleted and the following inserted in lieu thereof:

''§ 2H1.1. Offenses Involving Individual Rights

(a) Base Offense Level (Apply the greatest):

(1) the offense level from the offense guideline applicable to any underlying offense;

(2) 12, if the offense involved two or more participants;

(3) 10, if the offense involved (A) the use or threat of force against a person; or (B) property damage or the threat of property damage; or

(4) 6, otherwise.

(b) Specific Offense Characteristics

(1) If (A) the defendant was a public official at the time of the offense; or (B) the offense was committed under color of law, increase by 6 levels.

**Commentary**

Statutory Provisions: 18 U.S.C. 241, 242, 245(b), 246, 247, 248, 1091; 42 U.S.C. 3631.

*Application Notes*

1. 'Offense guideline applicable to any underlying offense' means the offense guideline applicable to any conduct established by the offense of conviction that constitutes an offense under federal, state, or local law (other than an offense that is itself covered under Chapter Two, Part H, Subpart 1).

In certain cases, conduct set forth in the count of conviction may constitute more than one underlying offense (e.g., two instances of assault, or one instance of assault and one instance of arson). In such cases, determine the number and nature of underlying offenses by applying the procedure set forth in Application Note 5 of § 1B1.2 (Applicable Guidelines). If the Chapter Two offense level for any of the underlying offenses under subsection (a)(1) is the same as, or greater than, the alternative base offense level under subsection (a)(2), (3), or (4), as applicable, use subsection (a)(1) and treat each underlying offense as if contained in a separate count of conviction. Otherwise, use subsection (a)(2), (3), or (4), as applicable, to determine the base offense level.

2. 'Participant' is defined in the Commentary to § 3B1.1 (Aggravating Role).

3. The burning or defacement of a religious symbol with an intent to intimidate shall be deemed to involve the threat of force against a person for the purposes of subsection (a)(3)(A).

4. If the finder of fact at trial or, in the case of a plea of guilty or nolo contendere, the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person, an additional 3-level enhancement from § 3A1.1(a) will apply.

5. If subsection (b)(1) applies, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).''.

Section 3A1.1 is deleted and the following inserted in lieu thereof:

''§ 3A1.1. Hate Crime Motivation or Vulnerable Victim

(a) If the finder of fact at trial or, in the case of a plea of guilty or nolo contendere, the court at sentencing determines beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person, increase by 3 levels.

(b) If the defendant knew or should have known that a victim of the offense was unusually vulnerable due to age, physical or mental condition, or that a victim was otherwise particularly susceptible to the criminal conduct, increase by 2 levels.

(c) Special Instruction

(1) Subsection (a) shall not apply if an adjustment from § 2H1.1(b)(1) applies.

**Commentary**

*Application Notes*

1. Subsection (a) applies to offenses that are hate crimes. Note that special evidentiary requirements govern the application of this subsection.

Do not apply subsection (a) on the basis of gender in the case of a sexual offense. In such cases, this factor is taken into account by the offense level of the Chapter Two offense guideline.

2. Subsection (b) applies to offenses involving an unusually vulnerable victim in which the defendant knows or should have known of the victim's unusual vulnerability. The adjustment would apply, for example, in a fraud

case where the defendant marketed an ineffective cancer cure or in a robbery where the defendant selected a handicapped victim. But it would not apply in a case where the defendant sold fraudulent securities by mail to the general public and one of the victims happened to be senile. Similarly, for example, a bank teller is not an unusually vulnerable victim solely by virtue of the teller's position in a bank.

Do not apply subsection (b) if the offense guideline specifically incorporates this factor. For example, if the offense guideline provides an enhancement for the age of the victim, this subsection should not be applied unless the victim was unusually vulnerable for reasons unrelated to age.

3. The adjustments from subsections (a) and (b) are to be applied cumulatively. Do not, however, apply subsection (b) in a case in which subsection (a) applies unless a victim of the offense was unusually vulnerable for reasons unrelated to race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation.

4. If an enhancement from subsection (b) applies and the defendant's criminal history includes a prior sentence for an offense that involved the selection of a vulnerable victim, an upward departure may be warranted.

Background: Subsection (a) reflects the directive to the Commission, contained in Section 280003 of the Violent Crime Control and Law Enforcement Act of 1994, to provide an enhancement of not less than three levels for an offense when the finder of fact at trial determines beyond a reasonable doubt that the defendant had a hate crime motivation (i.e., a primary motivation for the offense was the race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of the victim). To avoid unwarranted sentencing disparity based on the method of conviction, the Commission has broadened the application of this enhancement to include offenses that, in the case of a plea of guilty or nolo contendere, the court at sentencing determines are hate crimes.''.

The Commentary to § 1B1.5 captioned ''Application Notes'' is amended in Note 1 by deleting ''2H1.1(a)(2)'' and inserting in lieu thereof ''2H1.1(a)(1)''.

The Commentary to § 2H4.1 captioned ''Application Note'' is amended in Note 1 by deleting ''2 plus the offense'' and inserting in lieu thereof ''Offense''.

Section 3D1.2(d) is amended in the third paragraph by deleting ''2H1.2, 2H1.3, 2H1.4,''.

Reason for Amendment: This is a five-part amendment. First, the amendment adds an additional subsection to § 3A1.1 (Vulnerable Victim) to implement the directive contained in Section 280003 of the Violent Crime Control and Law Enforcement Act of 1994 by providing a three-level increase in the offense level for offenses that are ''hate crimes.'' Second, the amendment consolidates §§ 2H1.1, 2H1.3, 2H1.4, and 2H1.5, and adjusts the offense levels in these guidelines to harmonize them with each other, reflect the additional enhancement now contained in § 3A1.1, and better reflect the seriousness of the underlying conduct. Third, the amendment references violations of 18 U.S.C. 248 (the Freedom of Access to Clinic Entrances Act of 1994, Public Law 103–259, 108 Stat. 694) to the consolidated § 2H1.1. Fourth, the amendment clarifies the operation of § 3A1.1 with respect to a vulnerable victim. Fifth, the amendment addresses the directive to the Commission in section 240002 of the Violent Crime Control and Law Enforcement Act of 1994 (pertaining to elderly victims of crimes of violence).

Section 280003 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to provide a minimum enhancement of three levels for offenses that the finder of fact at trial determines are hate crimes. This directive also instructs the Commission to ensure that there is reasonable consistency with other guidelines and that duplicative punishments for the same offense are avoided. The congressional directive in section 280003 requires that the three-level hate crimes enhancement apply where ''the finder of fact at trial determines beyond a reasonable doubt'' that the offense of conviction was a hate crime. This amendment makes the enhancement applicable if either the finder of fact at trial or, in the case of a guilty or nolo contendere plea, the court at sentencing determines that the offense was a hate crime. By broadening the applicability of the congressionally mandated enhancement, this amendment will avoid unwarranted sentencing disparity based on the mode of conviction. The Commission's general guideline promulgation authority, see 28 U.S.C. 994, permits such a broadening of the enhancement.

The addition of a generally applicable Chapter Three hate crimes enhancement requires amendment of the civil rights offense guidelines to avoid duplicative punishments. In addition, to further the Commission's goal of simplifying the operation of the guidelines, the proposed amendment consolidates the four current civil rights offense guidelines into one guideline and adjusts these guidelines to take into account the new enhancement under § 3A1.1(a).

The Freedom of Access to Clinic Entrances Act of 1994 makes it a crime to interfere with access to reproductive services or to interfere with certain religious activities. This Act criminalizes a broad array of conduct, from non-violent obstruction of the entrance to a clinic to murder. The amendment treats these violations in the same way as other offenses involving individual rights.

Section 240002 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to ensure that the guidelines provide sufficiently stringent penalties for crimes of violence against elderly victims. Upon review of the guidelines, the Commission determined that the penalties currently provided generally appear appropriate; however, this amendment strengthens the Commentary to § 3A1.1 in one area by expressly providing a basis for an upward departure if both the current offense and a prior offense involved a vulnerable victim (including an elderly victim), regardless of the type of offense.

Finally, Section 250003 of the Violent Control and Law Enforcement Act of 1994 directs the Commission to review, and if necessary, amend the sentencing guidelines to ensure that victim-related adjustments for fraud offenses against older victims are adequate. Section 250003 also directs the Commission to study and report to the Congress on this issue. See Report to Congress: Adequacy of Penalties for Fraud Offenses Involving Elderly Victims (March 13, 1995). Although the Commission found that the current guidelines generally provided adequate penalties in these cases, it noted some inconsistency in the application of § 3A1.1 regarding whether this adjustment required proof that the defendant had ''targeted the victim on account of the victim's vulnerability.'' This amendment revises the Commentary of § 3A1.1 to clarify application with respect to this issue.

14. Amendment: Section 2K2.1(a)(1) is amended by deleting: ''defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense, and the instant offense involved a firearm listed in 26 U.S.C. 5845(a)'',

and inserting in lieu thereof:

''offense involved a firearm described in 26 U.S.C 5845(a) or 18 U.S.C. 921(a)(30), and the defendant had at least two prior felony convictions of either a crime of violence or a controlled substance offense''.

Section 2K2.1(a)(3) is amended by deleting:

''defendant had one prior felony conviction of either a crime of violence or a controlled substance offense, and the instant offense involved a firearm listed in 26 U.S.C. 5845(a)'',

and inserting in lieu thereof:

''offense involved a firearm described in 26 U.S.C 5845(a) or 18 U.S.C. 921(a)(30), and the defendant had one prior conviction of either a crime of violence or controlled substance offense''.

Section 2K2.1(a)(4)(B) is amended by deleting ''listed in 26 U.S.C. 5845(a)'' and inserting in lieu thereof ''described in 26 U.S.C 5845(a) or 18 U.S.C. 921(a)(30)''.

Section 2K2.1(a)(5) is amended by deleting ''listed in 26 U.S.C. 5845(a)'' and inserting in lieu thereof ''described in 26 U.S.C 5845(a) or 18 U.S.C. 921(a)(30)''.

Section 2K2.1(a)(8) is amended by deleting ''or (m)'' and by inserting in lieu thereof ''(m),(s),(t), or (x)(1)''.

The Commentary to § 2K2.1 captioned ''Statutory Provisions'' is amended by inserting ''–(w), (x)(1)'' immediately following ''(r)'', and by inserting '', (h), (j)–(n)'' immediately following ''(g)''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended by deleting Note 3 and inserting in lieu thereof:

''3. A 'firearm described in 26 U.S.C. 5845(a)' includes: (i) A shotgun having a barrel or barrels of less than 18 inches in length; a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; a rifle having a barrel or barrels of less than 16 inches in length; or a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (ii) a machinegun; (iii) a silencer; (iv) a destructive device; and (v) certain unusual weapons defined in 26 U.S.C. 5845(e) (that are not conventional, unaltered handguns, rifles, or shotguns). For a more detailed definition, refer to 26 U.S.C. 5845.

A 'firearm described in 18 U.S.C. 921(a)(30)' (pertaining to semiautomatic assault weapons) does not include a weapon exempted under the provisions of 18 U.S.C. 922(v)(3).''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended in Note 6 by deleting ''or (v)'' and inserting ''(v)'' in lieu thereof; and by inserting ''; or (vi) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child as defined in 18 U.S.C. 922(d)(8)'' immediately following ''States''.

The Commentary to § 2K2.1 captioned ''Application Notes'' is amended by deleting Note 12 and inserting in lieu thereof:

''12. If the only offense to which § 2K2.1 applies is 18 U.S.C. 922 (i), (j), or (u), 18 U.S.C. 924 (j) or (k), or 26 U.S.C. 5861 (g) or (h) (offenses involving a stolen firearm or ammunition) and the base offense level is determined under subsection (a)(7), do not apply the adjustment in subsection (b)(4) unless the offense involved a firearm with an altered or obliterated serial number. This is because the base offense level takes into account that the firearm or ammunition was stolen.

Similarly, if the only offense to which § 2K2.1 applies is 18 U.S.C. 922(k) (offenses involving an altered or obliterated serial number) and the base offense level is determined under subsection (a)(7), do not apply the adjustment in subsection (b)(4) unless the offense involved a stolen firearm or ammunition. This is because the base offense level takes into account that the firearm had an altered or obliterated serial number.''.

Reason for Amendment: This is a five-part amendment. First, the amendment revises § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition) to provide increased offense levels for possession of a semiautomatic assault weapon that correspond to those currently provided for possession of machineguns and other firearms described in 26 U.S.C. 5845(a). Second, the amendment addresses section 110201 of the Violent Crime Control Law Enforcement Act of 1994 by providing an offense level of six for the misdemeanor portion of 18 U.S.C. 922(x)(1) (involving sale or transfer of a handgun or ammunition to a juvenile). For an offense under the felony portion of 18 U.S.C. 922(x)(1) (involving the sale or transfer of a handgun or handgun ammunition to a juvenile knowing or having reasonable cause to believe that the handgun or ammunition was intended to be used in a crime), the enhancement in subsection (b)(5) will provide a minimum offense level of 18. Third, the amendment addresses section 110401 of the Violent Crime Control and Law Enforcement Act of 1994 by adding to the definition of a ''prohibited person'' in § 2K2.1 a person under the court order described in that crime bill section. Fourth, the amendment provides an offense level of six for the misdemeanors set forth in 18 U.S.C. 922 (s) and (t) (involving violations of the Brady Act). Fifth, the amendment clarifies that Application Note 6 in § 2K2.1 applies only to cases in which the base offense level is determined under § 2K2.1(a)(7).

15. Amendment: The Commentary to § 2L1.2 captioned ''Application Notes'' is amended in Note 2 by deleting:

''a sentence at or near the maximum of the applicable guideline range may be warranted'',

and inserting in lieu thereof:

''an upward departure may be warranted. See § 4A1.3 (Adequacy of Criminal History Category)''.

Reason for Amendment: This amendment revises § 2L1.2 (Unlawfully Entering or Remaining in the United States) to authorize the court to consider an upward departure in the case of a defendant with repeated prior instances of deportation not resulting in a criminal conviction.

16. Amendment: Section 2L2.1(b)(2) is amended by deleting ''sets of'', and by deleting ''Sets of''.

Section 2L2.1(b) is amended by inserting the following additional subdivision:

''(3) If the defendant knew, believed, or had reason to believe that a passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving violation of the immigration laws, increase by 4 levels.''.

The Commentary to § 2L2.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''of documents'' immediately before ''intended''; and by deleting ''documents as one set'' and inserting in lieu thereof ''set as one document''.

The Commentary to § 2L2.1 captioned ''Application Notes'' is amended by inserting the following additional note:

''3. Subsection (b)(3) provides an enhancement if the defendant knew, believed, or had reason to believe that a passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving violation of the immigration laws. If the defendant knew, believed, or had reason to believe that the felony offense to be committed was of an especially serious type, an upward departure may be warranted.''.

Section 2L2.2 is amended by inserting the following additional subsection:

''(c) Cross Reference

(1) If the defendant used a passport or visa in the commission or attempted

commission of a felony offense, other than an offense involving violation of the immigration laws, apply—

(A) § 2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to that felony offense, if the resulting offense level is greater than that determined above; or

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.''.

Reason for Amendment: This is a three-part amendment. First, this amendment provides an enhancement in § 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law) if the defendant trafficked in a passport or visa knowing, believing, or having reason to believe that the passport or visa was to be used to facilitate the commission of a felony offense, other than an offense involving violation of the immigration laws. Second, this amendment corrects a technical error in § 2L2.1(b)(2). Third, this amendment adds a cross reference to § 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use; False Personation or Fraudulent Marriage by Alien to Evade Immigration Law; Fraudulently Acquiring or Improperly Using a United States Passport) that addresses the case of a defendant who uses a passport or visa in the commission or attempted commission of a felony offense, other than an offense involving violation of the immigration laws.

17. Amendment: Section 2P1.2(a)(2) is amended by inserting ''methamphetamine,'' immediately following ''PCP,''.

Section 2P1.2(a)(3) is amended by inserting ''methamphetamine,'' immediately following ''PCP,''.

Section 2P1.2 is amended by deleting subsection (c)(1) and inserting in lieu thereof:

''(1) If the object of the offense was the distribution of a controlled substance, apply the offense level from § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy). Provided, that if the defendant is convicted under 18 U.S.C. 1791(a)(1) and is punishable under 18 U.S.C. 1791(b)(1), and the resulting offense level is less than level 26, increase to level 26.''.

Reason for Amendment: This amendment conforms the offense level for methamphetamine offenses in a correctional or detention facility to that of other controlled substance offenses committed in a correctional or detention facility that have the same statutory maximum penalty. This change reflects the increase in the maximum penalty for methamphetamine offenses in section 90101 of the Violent Crime Control and Law Enforcement Act of 1994. In addition, the amendment expands the cross reference in subsection (c)(1) to cover distribution of all controlled substances in a correctional or detention facility.

18. Amendment: Sections 2S1.1 and 2S1.2 are deleted and the following inserted in lieu thereof:

''§ 2S1.1. Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(a) Base Offense Level (Apply the greatest):

(1) The offense level for the underlying offense from which the funds were derived, if the defendant committed the underlying offense (or otherwise would be accountable for the commission of the underlying offense under § 1B1.3 (Relevant Conduct)) and the offense level for that offense can be determined; or

(2) 12 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds, if the defendant knew or believed that the funds were the proceeds of, or were to be used to promote, an offense involving the manufacture, importation, or distribution of controlled substances or listed chemicals; a crime of violence; or an offense involving firearms or explosives, national security, or international terrorism; or

(3) 8 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds.

(b) Specific Offense Characteristics

(1) If the defendant knew or believed that (A) the financial or monetary transactions, transfers, transportation, or transmissions were designed in whole or in part to conceal or disguise the proceeds of criminal conduct, or (B) the funds were to be used to promote further criminal conduct, increase by 2 levels.

(2) If subsection (b)(1)(A) is applicable and the offense (A) involved placement of funds into, or movement of funds through or from, a company or financial institution outside the United States, or (B) otherwise involved a sophisticated form of money laundering, increase by 2 levels.

**Commentary**

Statutory Provisions: 18 U.S.C. 1956, 1957.

*Application Notes*

1. 'Value of the funds' means the value of the funds or property involved in the financial or monetary transactions, transportation, transfers, or transmissions that the defendant knew or believed (A) were criminally derived funds or property, or (B) were to be used to promote criminal conduct.

When a financial or monetary transaction, transfer, transportation, or transmission involves legitimately derived funds that have been commingled with criminally derived funds, the value of the funds is the amount of the criminally derived funds, not the total amount of the commingled funds. For example, if the defendant deposited $50,000 derived from a bribe together with $25,000 of legitimately derived funds, the value of the funds is $50,000, not $75,000.

Criminally derived funds are any funds that are derived from a criminal offense; e.g., in a drug trafficking offense, the total proceeds of the offense are criminally derived funds. In a case involving fraud, however, the loss attributable to the offense occasionally may be considerably less than the value of the criminally derived funds (e.g., the defendant fraudulently sells stock for $200,000 that is worth $120,000 and deposits the $200,000 in a bank; the value of the criminally derived funds is $200,000, but the loss is $80,000). If the defendant is able to establish that the loss, as defined in § 2F1.1 (Fraud and Deceit), was less than the value of the funds (or property) involved in the financial or monetary transactions, transfers, transportation, or transmissions, the loss from the offense shall be used as the ''value of the funds.''

2. If the defendant is to be sentenced both on a count for an offense from which the funds were derived and on a count under this guideline, the counts will be grouped together under subsection (c) of § 3D1.2 (Groups of Closely-Related Counts).

3. Subsection (b)(1)(A) provides an increase for those cases that involve efforts to make criminally derived funds appear to have a legitimate source. This subsection will apply, for example, when the defendant conducted a transaction through a straw party or a front company, concealed a money-laundering transaction in a legitimate business, or used an alias or otherwise provided false information to disguise the true source or ownership of the funds.

4. In order for subsection (b)(1)(B) to apply, the defendant must have known or believed that the funds would be used to promote further criminal conduct, i.e., criminal conduct beyond the underlying criminal conduct from which the funds were derived.

5. Subsection (b)(2) provides an additional increase for those money laundering cases that are more difficult to detect because sophisticated steps were taken to conceal the origin of the money. Subsection (b)(2)(B) will apply, for example, if the offense involved the ''layering'' of transactions, i.e., the creation of two or more levels of transactions that were intended to appear legitimate.

Background: The statutes covered by this guideline were enacted as part of the Anti-Drug Abuse Act of 1986. These statutes cover a wide range of conduct. For example, they apply to large-scale operations that engage in international laundering of illegal drug proceeds. They also apply to a defendant who deposits $11,000 of fraudulently obtained funds in a bank. In order to achieve proportionality in sentencing, this guideline generally starts from a base offense level equivalent to that which would apply to the specified unlawful activity from which the funds were derived. The specific offense characteristics provide enhancements ''if the offense was designed to conceal or disguise the proceeds of criminal conduct and if the offense involved sophisticated money laundering.''.

Section 3D1.2(d) is amended in the second paragraph by deleting ''2S1.2,''.

Section 8C2.1(a) is amended by deleting ''2S1.2,''.

The Commentary to § 8C2.4 captioned ''Application Notes'' is amended in Note 5 by deleting ''§ 2S1.1 (Laundering of Monetary Instruments); § 2S1.2 (Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity); and § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports)''; and by inserting ''or'' immediately before ''§ 2R1.1''.

Appendix A (Statutory Index) is amended in the line reference to 18 U.S.C. 1957 by deleting ''2S1.2'' and inserting in lieu thereof ''2S1.1''.

Reason for Amendment: This revises and consolidates §§ 21/1 and 2S1.2 to simplify application and better assure that the offense levels comport with the relative seriousness of the offense conduct. When the Commission originally promulgated §§ 2S1.1 and 2S1.2 to govern sentencing for the money laundering and monetary transaction offenses found at 18 U.S.C. 1956 and 1957, these statutes were relatively new and, therefore, the Commission had little case experience upon which to base the guidelines. Since then, courts have construed the elements of these offenses broadly. As a result, the Commission has found that §§ 2S1.1 and 2S1.2 do not adequately distinguish the varying degrees of offense conduct that are sentenced under these guidelines.

This amendment responds to concerns about the operation of these guidelines by tying the base offense levels of the revised guideline more closely to the underlying conduct that was the source of the illegal proceeds. If the defendant committed the underlying offense and the offense level can be determined, subsection (a)(1) provides a base offense level equal to that for the underlying offense. In other instances, the base offense level is keyed to the value of funds involved. The amendment uses specific offense characteristics to assure greater punishment when the defendant knew or believed that the transactions were designed to conceal the criminal nature of the proceeds or when the funds were to be used to promote further criminal activity. An additional increase is provided under subsection (b)(2) if sophisticated efforts at concealment were involved.

Subsections (a)(2) and (a)(3) provide ''fallback'' offense levels that will apply primarily in cases in which the offense level for the underlying conduct cannot be determined. Subsection (a)(3) provides an offense level of eight plus the offense level from the table in § 2F1.1 (Fraud and Deceit). This offense level generally corresponds to the offense level for fraud and theft offenses with more than minimal planning. Subsection (a)(2) provides an offense level of 12 plus the offense level from the table in § 2F1.1 for cases in which the defendant knew or believed the funds were derived from, or were to be used to further, certain serious offenses (e.g., drug trafficking offenses). This approach is consistent with the current guideline structure, which generally treats such offenses as at least four levels more serious than typical economic offenses (e.g., fraud).

19. Amendment: Chapter Three, Part A, is amended by inserting the following additional section:

''§ 3A1.4. International Terrorism

(a) If the offense is a felony that involved, or was intended to promote, international terrorism, increase by 12 levels; but if the resulting offense level is less than level 32, increase to level 32.

(b) In each such case, the defendant's criminal history category from Chapter Four (Criminal History and Criminal Livelihood) shall be Category VI.

**Commentary**

*Application Notes*

1. Subsection (a) increases the offense level if the offense involved, or was intended to promote, international terrorism. 'International terrorism' is defined at 18 U.S.C. 2331.

2. Under subsection (b), if the defendant's criminal history category as determined under Chapter Four (Criminal History and Criminal Livelihood) is less than Category VI, it shall be increased to Category VI.''.

Section 5K2.15 is deleted.

Reason for Amendment: Section 120004 of the Violent Crime Control and Law Enforcement Act of 1994 directs the Commission to provide an appropriate enhancement for any felony that involves or is intended to promote international terrorism. The amendment addresses this directive by adding a Chapter Three enhancement at § 3A1.4 (Terrorism) in place of the current upward departure provision at § 5K2.15 (Terrorism).

20. Amendment: Section 3B1.4 is deleted and the following inserted in lieu thereof:

''§ 3B1.4. Using a Minor To Commit a Crime

If the defendant used or attempted to use a person less than eighteen years of age to commit the offense or assist in avoiding detection of, or apprehension for, the offense, increase by 2 levels.

**Commentary**

*Application Note*

1. 'Used or attempted to use' includes directing, commanding, encouraging, intimidating, counseling, training, processing, recruiting, or soliciting.

2. Do not apply this adjustment if the Chapter Two offense guideline incorporates this factor.

3. If the defendant used or attempted to use more than one person less than eighteen years of age, an upward departure may be warranted.''.

Reason for Amendment: This amendment implements the directive in Section 140008 of the Violent Crime Control and Law Enforcement Act of 1994 (pertaining to the use of a minor in the commission of an offense) in a slightly broader form.

21. Amendment: The Commentary to § 4B1.1 captioned ''Background'' is amended by deleting the text and inserting in lieu thereof:

''Section 994(h) of title 28, United States Code, mandates that the

Commission assure that certain 'career' offenders receive a sentence of imprisonment 'at or near the maximum term authorized.' Section 4B1.1 implements this directive, with the definition of a career offender tracking in large part the criteria set forth in 28 U.S.C. 994(h). However, in accord with its general guideline promulgation authority under 28 U.S.C. 994(a)–(f), and its amendment authority under 28 U.S.C. 994 (o) and (p), the Commission has modified this definition in several respects to focus more precisely on the class of recidivist offenders for whom a lengthy term of imprisonment is appropriate and avoid 'unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct * * * ' 28 U.S.C. 991(b)(1)(B). The Commission's refinement of this definition over time is consistent with Congress' choice of a directive to the Commission rather than a mandatory minimum sentencing statute ('The [Senate Judiciary] Committee believes that such a directive to the Commission will be more effective; the guidelines development process can assure consistent and rational implementation for the Committee's view that substantial prison terms should be imposed on repeat violent offenders and repeat drug traffickers.' S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983)).

The legislative history of this provision suggests that the phrase 'maximum term authorized' should be construed as the maximum term authorized by statute. See S. Rep. No. 225, 98th Cong., 1st Sess. 175 (1983), 128 Cong. Rec. 26, 511–12 (1982) (text of 'Career Criminals' amendment by Senator Kennedy) id. at 26, 515 (brief summary of amendment) id. at 26, 517–18 (statement of Senator Kennedy).''.

Application Note 1 of the Commentary to § 4B1.2 is repromulgated without change.

Reason for Amendment: This amendment inserts additional background commentary explaining the Commission's rationale and authority for § 4B1.1 (Career Offender). The amendment responds to a decision by the United States Court of Appeals for the District of Columbia Circuit in *United States* v. *Price,* 990 F.2d 1367 (D.C. Cir. 1993). In Price, the court invalidated application of the career offender guideline to a defendant convicted of a drug conspiracy because 28 U.S.C. 994(h), which the Commission cites as the mandating authority for the career offender guideline, does not expressly refer to inchoate offenses. The court indicated that it did not foreclose Commission authority to include conspiracy offenses under the career offender guideline by drawing upon its broader guideline promulgation authority in 28 U.S.C. 994(a). See also *United States* v. *Mendoza-Figueroa,* 28 F.3d 766 (8th Cir. 1994), vacated (Sept. 2, 1994); *United States* v. *Bellazerius,* 24 F.3d 698 (5th Cir.), cert. denied, 115 S. Ct. 375 (1994). Other circuits have rejected the Price analysis and upheld the Commission's definition of ''controlled substance offense.'' For example, the Ninth Circuit considered the legislative history to 994(h) and determined that the Senate Report clearly indicated that 994(h) was not the sole enabling statute for the career offender guidelines. *United States* v. *Heim,* 15 F.3d 830 (9th Cir.), cert. denied, 115 S. Ct. 55 (1994). See also *United States* v. *Hightower,* 25 F.3d 182 (3d Cir.), cert. denied, 115 S. Ct. 370 (1994); *United States* v. *Damerville,* 27 F.3d 254 (7th Cir.), cert. denied, 115 S. Ct. 445 (1994); *United States* v. *Allen,* 24 F.3d 1180 (10th Cir.), cert. denied, 115 S. Ct. 493 (1994); *United States* v. *Baker,* 16 F.3d 854 (8th Cir. 1994); *United States* v. *Linnear,* 40 F.3d 215 (7th Cir. 1994); *United States* v. *Kennedy,* 32 F.3d 876 (4th Cir. 1994), cert. denied, 115 S. Ct. 939 (1995); *United States* v. *Piper,* 35 F.3d 611 (1st Cir. 1994), cert. denied, 115 S. Ct. 1118 (1995).

22. Amendment: The Commentary to § 5D1.1 captioned ''Application Notes'' is amended in Note 1 by deleting:

''While there may be cases within this category that do not require post release supervision, these cases are the exception and may be handled by a departure from this guideline.'',

and inserting in lieu thereof:

''The court may depart from this guideline and not impose a term of supervised release if it determines that supervised release is neither required by statute nor required for any of the following reasons: (1) To protect the public welfare; (2) to enforce a financial condition; (3) to provide drug or alcohol treatment or testing; (4) to assist the reintegration of the defendant into the community; or (5) to accomplish any other sentencing purpose.''.

Section 5D1.2 is amended by deleting subsection (a); and by redesignating subsection (b) as subsection (a).

Section 5D1.2(a) (formerly § 5D1.2(b)) is amended by deleting ''Otherwise, when'' and inserting in lieu thereof ''If''.

Section 5D1.2 is amended by inserting the following additional subsection:

''(b) Provided, that the term of supervised release imposed shall in no event be less than any statutorily required term of supervised release.''.

Reason for Amendment: This amendment sets forth with greater specificity the circumstances under which the court may depart from the requirements of § 5D1.1 (Imposition of a Term of Supervised Release) and impose no term of supervised release. In addition, the amendment deletes, as unnecessary, the requirement in § 5D1.2 (Term of Supervised Release) of a term of supervised release of three to five years whenever a statute requires any term of supervised release. Instead, the amendment provides that, in the case of a statute requiring a term of supervised release, the length of the term of supervised release shall be determined by the class of felony of which the defendant was convicted, but shall not be less than any term required by statute.

23. Amendment: Section 5E1.1(a)(2) is amended by deleting ''§ 1472 (h), (i), (j), or (n)'' and inserting in lieu thereof ''§ 46312, § 46502, or § 46504''.

The Commentary to § 5E1.1 captioned ''Background'' is amended in the first paragraph by deleting ''and of designated subdivisions of 49 U.S.C. 1472'' and inserting in lieu thereof ''or 49 U.S.C. 46312, 46502, or 46504''.

The Commentary to § 5E1.1 captioned ''Background'' is amended in the second paragraph by deleting ''§ 1472 (h), (i), (j), or (n)'' wherever it appears and inserting in lieu thereof in each instance ''§ 46312, § 46502, or § 46504''.

The Commentary to § 5E1.1 is amended by inserting the following immediately before ''Background'':

*''Application Note*

1. In the case of a conviction under certain statutes, additional requirements regarding restitution apply. See 18 U.S.C. 2248 and 2259 (applying to convictions under 18 U.S.C. 2241–2258 for sexual-abuse offenses and sexual exploitation of minors); 18 U.S.C. 2327 (applying to convictions under 18 U.S.C. 1028–1029, 1341–1344 for telemarketing-fraud offenses); 18 U.S.C. 2264 (applying to convictions under 18 U.S.C. 2261–2262 for domestic-violence offenses). To the extent that any of the above-noted statutory provisions conflicts with the provisions of this guideline, the applicable statutory provision shall control.''.

Reason for Amendment: Section 40113 of the Violent Crime Control and Law Enforcement Act of 1994 requires ''mandatory'' restitution for offenses involving sexual abuse and sexual exploitation of children under 18 U.S.C. 2241–2258. Sections 250002 and 40221 add similar ''mandatory'' restitution provisions for offenses involving telemarketing fraud (18 U.S.C. 2327)

and domestic violence (18 U.S.C. 2264). These provisions also require that compliance with a restitution order be a condition of probation or supervised release, have broader definitions of loss than 18 U.S.C. 3663, and apply ''notwithstanding section 3663, and in addition to any civil or criminal penalty authorized by law.'' This amendment adds commentary to § 5E1.1 (Restitution) to alert the courts to the new statutory provisions.

In addition, this amendment conforms § 5E1.1 to the redesignation of 49 U.S.C. 1472 (h), (i), (j), and (n) as 49 U.S.C. 46312, 46502 (a), (b), and 46504.

24. Amendment: Chapter Five, Part K, Subpart Two is amended by inserting the following additional section:

''§ 5K2.17. High-Capacity, Semiautomatic Firearms (Policy Statement)

If the defendant possessed a high-capacity, semiautomatic firearm in connection with a crime of violence or controlled substance offense, an upward departure may be warranted. A 'high-capacity, semiautomatic firearm' means a semiautomatic firearm that has a magazine capacity of more than ten cartridges. The extent of any increase should depend upon the degree to which the nature of the weapon increased the likelihood of death or injury in the circumstances of the particular case.

**Commentary**

*Application Note*

1. 'Crime of violence' and 'controlled substance offense' are defined in § 4B1.2 (Definitions of Terms Used in Section 4B1.1).''.

Reason for Amendment: This amendment addresses the directive in section 110501 of the Violent Crime Control and Law Enforcement Act of 1994 to provide an ''appropriate'' enhancement for a crime of violence or drug trafficking crime if a semiautomatic firearm is involved.

According to data reviewed by the Commission, semiautomatic firearms are used in 50–70 percent of offenses involving a firearm. Thus, offenses involving a semiautomatic firearm represent the typical or ''heartland'' case under the guidelines. Consequently, the firearms enhancements in the guidelines for crimes of violence and drug trafficking can be considered to take into account the fact that firearms involved in these offenses typically are semiautomatic. Moreover, the ''firepower'' or ''dangerousness'' of semiautomatic firearms, compared to other types of firearms, varies substantially with caliber and magazine capacity. For example, a .25 caliber, six-shot semiautomatic pistol is not considered as having as much firepower as a .38 caliber, six-shot revolver or a .357 magnum, six-shot revolver. A nine-millimeter semiautomatic pistol fires a somewhat more powerful cartridge than a .38 caliber revolver and a somewhat less powerful cartridge than a .357 magnum revolver. But some nine-millimeter semiautomatic pistols hold from 14–18 cartridges, compared to six cartridges for a revolver. A high magazine capacity, nine-millimeter semiautomatic pistol can be said to have significantly more firepower than a revolver because it can fire a significantly larger number of shots without reloading.

If harm actually results (e.g., death or bodily injury), the guidelines generally take that harm into account directly. Consequently, in considering any distinction between semiautomatic firearms and other firearms, the issue is whether there is any significant difference in the risk of harm. The difference in the risk of harm also varies widely with the circumstances of the offense. For example, in a robbery at very close range, the difference in the likelihood of death or bodily injury between a revolver and semiautomatic pistol would seem to be small. In contrast, in a drive-by shooting the greater firepower of a semiautomatic weapon likely would have a more significant effect on the likelihood of death or injury.

After considering the above factors, the Commission determined that the most appropriate approach at this time was to provide a specific basis for an upward departure when a high-capacity semiautomatic firearm is possessed in connection with a crime of violence or drug trafficking offense, thereby allowing the courts the flexibility to take this factor into account as appropriate in the circumstances of the particular case. Additionally, the Commission amended § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy) to provide greater enhancement when a firearm (including a semiautomatic firearm) is involved.

25. Amendment: Chapter Five, Part K, Subpart Two is amended by inserting the following additional section:

''§ 5K2.18. Violent Street Gangs (Policy Statement)

If the defendant is subject to an enhanced sentence under 18 U.S.C. 521 (pertaining to criminal street gangs), an upward departure may be warranted. The purpose of this departure provision is to enhance the sentences of defendants who participate in groups, clubs, organizations, or associations that use violence to further their ends. It is to be noted that there may be cases in which 18 U.S.C. 521 applies, but no violence is established. In such cases, it is expected that the guidelines will account adequately for the conduct and, consequently, this departure provision would not apply.''.

Reason for Amendment: This amendment expressly provides a basis for an upward departure in the case of a defendant subject to a statutorily enhanced maximum penalty under 18 U.S.C. 521 (pertaining to criminal street gangs), as enacted by section 150000 of the Violent Crime and Law Enforcement Act of 1994.

26. Amendment: Section 7B1.3(g)(2) is amended by deleting ''the defendant may, to the extent permitted by law, be ordered to recommence supervised release upon release from imprisonment'', and inserting in lieu thereof:

''the court may include a requirement that the defendant be placed on a term of supervised release upon release from imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. 18 U.S.C. 3583(h)''.

The Commentary to § 7B1.3 captioned ''Application Notes'' is amended in Note 2 by deleting:

''. This statute, however, neither expressly authorizes nor precludes a court from ordering that a term of supervised release recommence after revocation. Under § 7B1.3(g)(2), the court may order, to the extent permitted by law, the recommencement of a supervised release term following revocation'',

and inserting in lieu thereof:

'', (g)–(i). Under 18 U.S.C. 3583(h) (effective September 13, 1994), the court, in the case of revocation of supervised release and imposition of less than the maximum imposable term of imprisonment, may order an additional period of supervised release to follow imprisonment''.

The Commentary to § 7B1.3 captioned ''Application Notes is amended by deleting Note 3, and by renumbering the remaining notes accordingly.

The Commentary to § 7B1.4 captioned ''Application Notes'' is amended by deleting Notes 5 and 6 and inserting in lieu thereof:

''5. Upon a finding that a defendant violated a condition of probation or

supervised release by being in possession of a controlled substance or firearm or by refusing to comply with a condition requiring drug testing, the court is required to revoke probation or supervised release and impose a sentence that includes a term of imprisonment. 18 U.S.C. 3565(b), 3583(g).

6. In the case of a defendant who fails a drug test, the court shall consider whether the availability of appropriate substance abuse programs, or a defendant's current or past participation in such programs, warrants an exception from the requirement of mandatory revocation and imprisonment under 18 U.S.C. 3565(b) and 3583(g). 18 U.S.C. 3563(a), 3583(d).''.

Reason for Amendment: Section 110505 of the Violent Crime Control and Law Enforcement Act of 1994 amends 18 U.S.C. 3583(e)(3) by specifying that a defendant whose supervised release term is revoked may not be required to serve more than five years in prison if the offense that resulted in the term of supervised release is a Class A felony. The provision also amends section 3583(g) by eliminating the mandatory re-imprisonment period of at least one-third of the term of supervised release if the defendant possesses a controlled substance or a firearm, or refuses to participate in drug testing. Finally, the provision expressly authorizes the court to order an additional, limited period of supervision following revocation of supervised release and re-imprisonment.

Section 20414 of the Violent Crime Control and Law Enforcement Act of 1994 makes mandatory a condition of probation requiring that the defendant refrain from any unlawful use of a controlled substance. 18 U.S.C. 3563(a)(4). The section also establishes a condition that the defendant, with certain exceptions, submit to periodic drug tests. The existing mandatory condition of probation requiring the defendant not to possess a controlled substance remains unchanged. 18 U.S.C. 3563(a)(3). Similar requirements are made with respect to conditions of supervised release. 18 U.S.C. 3583(d).

Section 110506 of the Violent Crime Control and Law Enforcement Act of 1994 mandates revocation of probation and imposition of a term of imprisonment if the defendant violates probation by possessing a controlled substance or a firearm, or by refusing to comply with drug testing. 18 U.S.C. 3565(b). It does not require revocation in the case of use of a controlled substance (although use presumptively may establish possession). No minimum term of imprisonment is required other than a sentence that includes a ''term of imprisonment'' consistent with the sentencing guidelines and revocation policy statements. Similar requirements are set forth in 18 U.S.C. 3583(g) with respect to conditions of supervised release.

Section 20414 permits ''an exception in accordance with United States Sentencing Commission guidelines'' from the mandatory revocation provisions of section 3565(b), ''when considering any action against a defendant who fails a drug test administered in accordance with [section 3563(a)(4)].'' The exception from the mandatory revocation provisions appears limited to a defendant who fails the test and does not appear to apply to a defendant who refuses to take the test.

This amendment conforms §§ 7B1.3 (Revocation of Probation or Supervised Release) and 7B1.4 (Term of Imprisonment) to these revised statutory provisions.

27. Amendment: Appendix A is amended by inserting the following at the appropriate place by title and section:

| Title | Section |
|---|---|
| ''7 U.S.C. 2018(c) ..... | 2N2.1'' |
| ''7 U.S.C. 6810 ..... | 2N2.1'' |
| ''18 U.S.C. 36 ..... | 2D1.1.'' |
| ''18 U.S.C. 37 ..... | 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A3.1, 2A3.4, 2A4.1, 2A5.1, 2A5.2, 2B1.3, 2B3.1, 2K1.4'' |
| ''18 U.S.C. 113(a)(1) | 2A2.1'' |
| ''18 U.S.C. 113(a)(2) | 2A2.2'' |
| ''18 U.S.C. 113(a)(3) | 2A2.2'' |
| ''18 U.S.C. 113(a)(5) (Class A misdemeanor provisions only). | 2A2.3'' |
| ''18 U.S.C. 113(a)(6) | 2A2.2'' |
| ''18 U.S.C. 113(a)(7) | 2A2.3'' |
| ''18 U.S.C. 470 ..... | 2B5.1, 2F1.1'' |
| ''18 U.S.C. 668 ..... | 2B1.1'' |
| ''18 U.S.C. 844(m) ... | 2K1.3'' |
| ''18 U.S.C. 880 ..... | 2B1.1'' |
| ''18 U.S.C. 922(s)–(w). | 2K2.1'' |
| ''18 U.S.C. 922(x)(1) | 2K2.1'' |
| ''18 U.S.C. 924(i) ..... | 2A1.1, 2A1.2'' |
| ''18 U.S.C. 924(j)–(n) | 2K2.1'' |
| ''18 U.S.C. 1033 ..... | 2B1.1, 2F1.1, 2J1.2'' |
| ''18 U.S.C. 1118 ..... | 2A1.1, 2A1.2'' |
| ''18 U.S.C. 1119 ..... | 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1'' |
| ''18 U.S.C. 1120 ..... | 2A1.1, 2A1.2, 2A1.3, 2A1.4'' |
| ''18 U.S.C. 1121 ..... | 2A1.1, 2A1.2'' |
| ''18 U.S.C. 1204 ..... | 2J1.2'' |
| ''18 U.S.C. 1716D .... | 2Q2.1'' |
| ''18 U.S.C. 2114(b) .. | 2B1.1'' |
| ''18 U.S.C. 2258(a),(b). | 2G2.1, 2G2.2'' |
| ''18 U.S.C. 2261 ..... | 2A1.1, 2A1.2, 2A2.1, 2A2.2, 2A2.3, 2A3.1, 2A3.4, 2A4.1, 2B3.1, 2B3.2, 2K1.4'' |
| ''18 U.S.C. 2262 ..... | 2A1.1, 2A1.2, 2A2.1, 2A2.2, 2A2.3, 2A3.1, 2A3.4, 2A4.1, 2B3.1, 2B3.2, 2K1.4'' |
| ''18 U.S.C. 2280 ..... | 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2B1.3, 2B3.1, 2B3.2, 2K1.4'' |
| ''18 U.S.C. 2281 ..... | 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A2.1, 2A2.2, 2A2.3, 2A4.1, 2B1.3, 2B3.1, 2B3.2, 2K1.4'' |
| ''18 U.S.C. 2332a ..... | 2A1.1, 2A1.2, 2A1.3, 2A1.4, 2A1.5, 2A2.1, 2A2.2, 2B1.3, 2K1.4'' |
| ''18 U.S.C. 2423(b) .. | 2A3.1, 2A3.2, 2A3.3'' |
| ''21 U.S.C. 843(a)(9) | 2D3.1'' |
| ''21 U.S.C. 843(c) ..... | 2D3.1'' |
| ''21 U.S.C. 849 ..... | 2D1.2'' |
| ''21 U.S.C. 960(d)(3), (4). | 2D1.11'' |
| ''21 U.S.C. 960(d)(5) | 2D1.13'' |
| ''21 U.S.C. 960(d)(6) | 2D3.1'' |
| ''42 U.S.C. 1307(b) .. | 2F1.1'' |

In the line referenced to 18 U.S.C. 113(a) by inserting ''(for offenses committed prior to September 13, 1994)'' immediately following ''2A2.1'';

In the line referenced to 18 U.S.C. 113(b) by inserting ''(for offenses committed prior to September 13, 1994)'' immediately following ''2A2.2'';

In the line referenced to 18 U.S.C. 113(c) by inserting ''(for offenses committed prior to September 13, 1994)'' immediately following ''2A2.2'';

In the line referenced to 18 U.S.C. 113(f) by inserting ''(for offenses committed prior to September 13, 1994)'' immediately following ''2A2.2'';

In the line referenced to 18 U.S.C. 371 by inserting ''2K2.1 (if a conspiracy to violate 18 U.S.C. 924(c)),'' immediately before ''2X1.1'';

In the line referenced to 18 U.S.C. 1153 by inserting ''2A2.3,'' immediately before ''2A3.1'';

In the line referenced to 18 U.S.C. 2114 by deleting ''2114'' and inserting in lieu thereof ''2114(a)'';

and in the line referenced to 18 U.S.C. 2423 by deleting ''2423'' and by inserting in lieu thereof ''2423(a)''.

Appendix A is amended by deleting:

| | |
|---|---|
| ''49 U.S.C. 1472(c) ..... | 2A5.2 |
| 49 U.S.C. 1472(h)(2) ..... | 2Q1.2 |
| 49 U.S.C. 1472(i)(1) ..... | 2A5.1 |
| 49 U.S.C. 1472(j) ..... | 2A5.2 |
| 49 U.S.C. 1472(k)(1) ..... | 2A5.3 |
| 49 U.S.C. 1472(l) ..... | 2K1.5 |
| 49 U.S.C. 1472(n)(1) ..... | 2A5.1'' |

and inserting in lieu thereof:

| | |
|---|---|
| ''49 U.S.C. 46308 ..... | 2A5.2 |
| 49 U.S.C. 46312 ..... | 2Q1.2 |

| | |
|---|---|
| 49 U.S.C. 46502(a), (b) | 2A5.1 |
| 49 U.S.C. 46504 | 2A5.2 |
| 49 U.S.C. 46506 | 2A5.3 |
| 49 U.S.C. 46505 | 2K1.5 |
| 49 U.S.C. 46502(b) | 2A5.1'' |

Section 2D3.1 is amended in the title by deleting: ''Illegal Use of Registration Number to Manufacture, Distribute, Acquire, or Dispense a Controlled Substance'' and inserting in lieu thereof ''Regulatory Offenses Involving Registration Numbers; Unlawful Advertising Relating to Schedule I Substances''.

Section 2D3.2 is amended by inserting ''or Listed Chemicals'' immediately after ''Controlled Substances''.

Section 2Q2.1 is amended by deleting the title and inserting in lieu thereof ''Offenses Involving Fish, Wildlife, and Plants''.

Reason for Amendment: This amendment makes Appendix A (Statutory Index) more comprehensive. References are added for new offenses enacted by the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, Public Law 103–190, 107 Stat. 2266; the Food Stamp Program Improvements Act of 1994, Public Law 103–225, 108 Stat. 106; the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296 108 Stat. 1464; the Domestic Chemical Diversion Act of 1993, Public Law 103–200, 107 Stat. 2333; and the International Parental Kidnapping Crime Act of 1993, Public Law 103–173, 107 Stat. 1998. In addition, the amendment conforms Appendix A to revisions in existing statutes. Finally, the amendment revises the titles of several offense guidelines to better reflect their scope.

[FR Doc. 95–11371 Filed 5–9–95; 8:45 am]

BILLING CODE 2210–40–P

federal register

Wednesday
May 10, 1995

## Part V

# Department of Housing and Urban Development

**Congregate Housing Services Program; Funding Availability; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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

### Rural Economic and Community Development Services—Rural Housing and Community Development Service

**[Docket No. N–95–3852; FR–3839–N–01]**

## Congregate Housing Services Program; Notice of Funding Availability (NOFA) for Fiscal Year 1995

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD; Office of the Administrator, Rural Housing and Community Development Service.[1]

**ACTION:** Notice of funding availability for fiscal year 1995.

**SUMMARY:** This Notice of Funding Availability (NOFA) announces the funding of designated geographic area competitions for HUD dollars and a national competition for dollars allocated to the Rural Housing and Community Development Service (RHCDS), which are available for the supportive services component of the Congregate Housing Services Program (CHSP). A Final Common Rule for the CHSP was published in the **Federal Register** as 59 FR 22220, on April 29, 1994. Funds are available for new grants for congregate services for frail elderly persons, persons with disabilities, and temporarily disabled individuals living in eligible housing for the elderly. States, Indian tribes, units of general local government, Public Housing Agencies (PHAs), Indian Housing Authorities (IHAs) and local nonprofit housing sponsors, are eligible applicants. Applications from PHA/IHAs and local non-profit housing sponsors are limited to the housing they own. States, Indian tribes and units of general local government may submit one or more applications on behalf of one or more owners of eligible housing who may be either local non-profit housing sponsors or for-profit housing owners.

This document contains information concerning: (a) The purpose of the NOFA; (b) where to get the application package; (c) deadline for filing applications; (d) eligibility, available amounts, and selection criteria; and (e) information on application processing, and the selection process.

[1] Previously entitled the Farmers Home Administration (FmHA).

**DATES:** The deadline date for submission of an application to HUD for funding under the CHSP is on or before 3 P.M., local time, July 10, 1995 at the appropriate HUD State or Area Office.

The deadline date for submission of an application to RHCDS for funding under the CHSP is on or before 3 P.M., Eastern Daylight Time, July 10, 1995 at RHCDS Headquarters.

**RECEIPT OF APPLICATIONS:** HUD will receive applications at the State or Area Office for the jurisdiction in which the projects are located.

RHCDS will receive applications at the RHCDS Headquarters Building in Washington, DC. Copies will also be received at the RHCDS State Office which has jurisdiction over the project.

**FOR FURTHER INFORMATION CONTACT:** For general information concerning grants under the CHSP, or limited technical assistance by telephone regarding the preparation of an application for the CHSP, potential applicants may contact HUD and RHCDS as follows:

For questions regarding HUD projects, applicants applying for Public and/or Indian Housing Projects should contact the Housing Management Specialist in the State or Area Office which has jurisdiction for the projects.

Applicants applying for Sections 8, 202, 221(d) or 236 Projects should call the Loan Servicer in the State or Area Office which has jurisdiction for the projects.

HUD and RHCDS State and Area Office addresses and telephone numbers are listed in Attachment 1 to this NOFA.

Applicants for RHCDS projects should contact Sue Harris at RHCDS Headquarters at 202–720–1606. (This is NOT a toll-free number.) Hearing impaired individuals may reach RHCDS by calling the central TDD number of (202)-245–0846, HUD by calling (202)-708–9300, or either agency by calling the TDD number of the Federal Relay Service 1–800–877–TDDY and requesting a transfer.

Applicants for HUD projects should not contact HUD Headquarters: such calls will normally be referred to the appropriate HUD State or Area Office. Applicants for RHCDS projects should not contact RHCDS State or District Offices; such calls will normally be referred to RHCDS Headquarters.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) under Number 2502–0485 through 5/31/97.

### Purpose and Substantive Description

*A. Authority and Background*

(1) Authority

(a) Section 802 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 USC 8011) created a new CHSP.

(b) Section 604 and 672 of the Housing and Community Development Act of 1992 amended the CHSP.

(c) A final common rule for the CHSP is at 59 FR 22220, published on April 29, 1994.

(2) Background

The CHSP was originally authorized and funded as a demonstration program under the Congregate Housing Services Act of 1978 (1978 Act) (42 USC 8001). It provided congregate housing and coordinated supportive services for elderly handicapped or non-elderly handicapped individuals to allow them to maintain their independence and avoid costly and unnecessary institutionalization. Congress appropriated funds for Fiscal Years 1979 through 1982, to remain available until expended. Since then, Congress has provided funds on an annual basis to continue funding grantees that previously received assistance. The demonstration became a permanent program in 1987.

Based upon the experience of the grantees funded under the demonstration, Congress created a new CHSP as one of the components of NAHA, which was enacted on November 28, 1990 and amended in 1992. HUD, in coordination with the Rural Housing and Community Development Service (RHCDS) of the Department of Agriculture, administers the CHSP under a Common Rule in accordance with the statute. This Notice announces the availability of both HUD and RHCDS funds for the CHSP and invites applications from both HUD and RHCDS applicants.

The CHSP is a program with two components: a retrofit and renovation component which has not yet been implemented and a supportive services component. Retrofitting and renovation of facilities are not eligible for funding under this NOFA.

Funds are available under the supportive services component for five-year, renewable, congregate services grants for frail elderly persons, persons with disabilities, and temporarily disabled individuals living in eligible housing for the elderly. The program serves as a means of preventing

unnecessary institutionalization and encouraging deinstitutionalization of those potentially eligible residents who do not need an institutionalized setting. It also improves the capacity of management to assess the supportive service needs of eligible residents, and to either ensure the coordination and delivery of supportive services from third party providers or provide the services directly in order to meet the minimum needs of eligible residents.

HUD and RHCDS are interested in using the services funds in the most cost-efficient manner. Thus, a number of program items are highlighted. Both Departments continue to:

(a) stress the service coordination/case management aspects of the program by making the service coordinator a clearly mandated function, whether funded wholly or in part by CHSP, or funded by a third party. (The more coordinators that are funded, the larger the number of projects whose residents will ultimately benefit from supportive services in the community.)

(b) focus on projects nearly fully occupied. (Occupied projects more readily are able to plan programs for existing needs and get them operational in the most effective manner and the shortest time. Thus, CHSP is offered this year only to projects which are at least 85 percent occupied as of the date of the CHSP application to HUD.)

(c) clarify the meals requirement. While the current requirement that each CHSP provide at least one hot meal per day in a group setting for some or all of the participants who are assessed as needing such assistance is not changed, additional meals can be available for frail elderly or non-elderly disabled participants who are assessed with a need for them. Such additional meals can be either hot or cold and may be home delivered.

The CHSP will ensure the long-term provision of supportive services in a manner which insures the program participant's freedom of choice and which respects the dignity of the persons served. It will also provide readily available and efficient services with emphasis on providing only those services minimally necessary to maintain independent living, but maintaining a continuum of support for individual program participants over time.

B. Allocation Amounts

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (P.L. 103–124) appropriated $25,000,000 in FY 1994. Approximately $18,700,000 of these funds remained after the FY 1994 competition and the refunding of the 52 existing grantees through July 12, 1997. Additionally, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995 (P.L. 103–327) made available $25,000,000 for the CHSP, all of which is included in this NOFA. Up to $6,267,000 will be used to correct extensions and provide further extensions to pre-1992 grantees.

Together with carryover funds, $38,480,150 is available for new grants. In consultation with RHCDS, the dollars are allocated as follows:

—Approximately 20 percent ($7,696,030) of the total funds are available to applicants with RHCDS projects.

—The remainder, approximately 80 percent ($30,784,120) is for applicants with HUD projects.

1. HUD Projects

Applicants for HUD projects may apply for grants from the available $30,784,120. The formula for the HUD allocation is stated below:

a. Compute the total number of section 8 New Construction/substantial rehabilitation elderly, Section 202, section 221(d) elderly, section 236 elderly and PIH/IHA elderly units in each geographic area for the nation as a whole.

b. Calculate the proportion of the national total represented by each geographic area's share.

c. Divide the available dollars proportionally in accordance with the geographic area's share of the elderly housing inventory, as follows:

| Geographic area | No. of units | Dollars | Percentage |
|---|---|---|---|
| New England | 102,257 | $2,770,571 | 9 |
| New York/New Jersey | 127,124 | 3,386,253 | 11 |
| Mid-Atlantic | 135,760 | 3,694,095 | 12 |
| Southeast | 182,684 | 4,617,618 | 15 |
| Midwest | 273,075 | 7,080,348 | 23 |
| Southwest | 82,319 | 2,154,888 | 7 |
| Great Plains | 95,605 | 2,462,730 | 8 |
| Rocky Mountain | 36,616 | 923,523 | 3 |
| Pacific/Hawaii | 96,958 | 2,462,730 | 8 |
| Northwest/Alaska | 42,837 | 1,231,364 | 4 |
| Total | 1,175,235 | 30,784,120 | *100 |

*Percentages are rounded to equal 100%.

The funds for the CHSP will be awarded by HUD through 10 geographical area competitions, in which applicants are selected to receive supportive services grants by HUD. The funding process is further described in Section II of this NOFA.

2. RHCDS Projects

Applicants for RHCDS projects may apply for grants from the available $7,696,030.

The funds for the CHSP will be awarded by RHCDS through a national competition, in which applicants are selected to receive supportive services grants by RHCDS Headquarters. HUD will fund the grants, and administer them with RHCDS assistance. The funding process is further described in Section II. of this NOFA.

*C. Eligibility*

1. General

Applicants must submit applications for HUD projects to HUD State or Area Offices and applications for RHCDS projects to RHCDS Headquarters and State Offices. Applicants may apply for either HUD and/or RHCDS dollars. Applications may only be submitted to the HUD State or Area Office/RHCDS State Office which has jurisdiction over the project.

Projects submitted by eligible applicants under this NOFA are limited to eligible housing for the elderly, as defined below.

2. Eligible Applicants

Eligible applicants are States, Indian Tribes, units of general local government, PHA/IHAs or local non-profit housing sponsors as defined in 59 FR 22220, published April 29, 1994 (sections 700.105 or 1944.252). Local non-profit housing sponsors and PHA/IHAs may only apply on behalf of projects they own. For-profit owners of eligible housing for the elderly may not apply directly for CHSP grants. For-profit owners of eligible housing for the elderly shall apply through an application submitted by a State, Indian tribe or unit of general local government (but NOT under an application submitted by a local non-profit sponsor or a PHA/IHA).

3. Eligible Housing Projects

Eligible projects under this NOFA must be eligible housing for the elderly as defined in 59 FR 22220, published April 29, 1994 (sections 700.105 or 1944.252), and must be 85 percent occupied as of the date of the application deadline for funding under this NOFA.

4. Services Required by the CHSP

Each application must provide documentation that it will provide or is already providing the following required services.

a. A meals program of at least one hot meal a day, seven days a week in a group setting for some or all of the participants; and,

b. A service coordinator to provide case management and other activities as required by 59 FR 22220, published April 29, 1994 (sections 700.220 and 225 or 1944.257 and 258).

5. Funding Limits

The maximum amount of funds which will be granted to any one applicant under this NOFA is $2,000,000, subject to Section II.G.(6). The maximum amount granted to any one project will be $500,000, also subject to Section II.G.(6).

*D. Selection Criteria/Ranking Factors*

1. General

To provide each applicant a fair and equitable opportunity to receive FY 1994 funds under the CHSP, HUD and RHCDS will use the selection criteria stated below to rate all eligible applications which have passed eligibility, threshold and technical review.

2. Selection Criteria

The selection criteria, with a maximum total rating value of 70 points, are as follows:

*Selection Criteria*

a. Experience or capability of the applicant:

The applicant currently administers an effective, successful service program for the frail elderly or (for persons with disabilities, or evidences relevant experience or capability to develop and implement such a service program. The applicant is:

| | | |
|---|---|---|
| Experienced ..... | _____ | (10) |
| Has Capability only ..... | _____ | ( 5) |
| Unqualified ..... | _____ | ( 0) |

If 10 points are awarded here, No Points may be awarded under criterion ''i''.

b. The degree of adequacy of local service providers, appropriateness of the targeting of the services and the relationship of the proposal to the needs and characteristics of the eligible residents of the projects where the services are to be provided:

Proposed services to be provided by both the applicant and local social service agencies:

(1) appropriately address the daily living needs of the residents presented in the application;

(2) adequately appear to both provide a core of necessary services and fill the gap between the existing services and those that are not available/affordable; and,

(3) will serve all residents identified as either disabled or frail (deficient in at least 3 activities of daily living).

| | | |
|---|---|---|
| Meets all three ..... | _____ | (15) |
| Meets 2 of 3 ..... | _____ | (10) |
| Meets one ..... | _____ | ( 5) |
| Meets none ..... | _____ | ( 0) |

c. The schedule for establishment of services following approval of the application:

The applicant's timetable for implementation of services is reasonable and credible based upon HUD/RHCDS's experience with the applicant.

| | | |
|---|---|---|
| Implementation in 6 months or less ..... | _____ | (5) |
| From 7 to 12 months ... | _____ | (3) |
| Over 12 months ..... | _____ | (0) |
| Plan is not credible as presented ..... | _____ | (0) |

d. The professional qualification of the members of the PAC:

The proposed PAC consists of no less than three individuals, and includes both social service professionals and at least one qualified medical or other health professional. PAC members are competent to appraise the functional abilities of frail elderly individuals and persons with disabilities in regard to performing activities of daily living.

| | | |
|---|---|---|
| Acceptable ..... | _____ | (5) |
| Not acceptable ..... | _____ | (0) |

e. The reasonableness and application of fee schedules established for congregate services:

The applicant proposes reasonable fees which meet prescribed requirements. The applicant has:

(1) accurately calculated meal fees according to Exhibit 20, or did not utilize meal fees as the meals are funded totally from the Older Americans Act;

(2) presented flat fees for services other than meals that do not exceed the cost of each service, or had no other service fee(s); and,

(3) proposed total fees that do not exceed 20% of a participant's adjusted income.

| | | |
|---|---|---|
| Yes, meets all three ..... | _____ | (10) |
| Yes, meets one or two . | _____ | ( 5) |
| No, fee schedule meets none ..... | _____ | ( 0) |

f. The adequacy and accuracy of proposed budgets:

The budget conforms to the following conditions:

(1) service costs are consistent with local market conditions;

(2) costs of all services correspond directly to the proposed number of participants;

(3) all costs proposed are eligible;

(4) the limits on administrative costs (10% of program), in-kind contributions (10% of match), local government proportion of match when a State is the applicant (10%) and the $1,200 per/person/year limit are not exceeded; and,

(5) total participant fees as shown in the first year budget are equal to or greater than 10% of total program cost.

| | | |
|---|---|---|
| Conforms to all five ..... | _____ | (15) |
| Conforms to at least two ..... | _____ | ( 5) |
| Conforms to one or none ..... | _____ | ( 0) |

g. The extent to which the applicant proposes funds from other services in excess of that required:

The applicant proposes matching funds for the first year and for the next four years in an amount that exceeds the minimum required. The applicant's match is:

| | | |
|---|---|---|
| (1) 55% or more of total program cost for the first year and/or one or more of the next four years ..... | _____ | ( 3) |
| (2) Under 55% of total program cost for the first and other years . | _____ | ( 0) |

h. The methods of providing for deinstitutionalized older individuals and persons with disabilities:

The application has a proposed plan to identify and transfer potential

participants from institutions to the project and into the CHSP.

| | | |
|---|---|---|
| There is a plan and it is acceptable. | YES_____ | (2) |
| | NO_____ | (0) |

i. Existing/New Services:

| | | |
|---|---|---|
| The applicant or other third parties currently do not provide supportive services to frail or disabled residents and the proposed CHSP services will constitute an entirely new program ..... | _____ | (5) |
| The applicant or other third party provides some supportive services to eligible residents; the proposed CHSP services will expand or add to existing services ..... | _____ | (0) |

If 5 points are awarded here, NO MORE THAN 5 POINTS may be awarded under criterion ''a''.

j. Housing/Services Assistance for Minorities and Minority Business Enterprise/Women Business Enterprise (MBE/WBE)

1. Housing/Services Experience

| | | |
|---|---|---|
| Applicant has significant previous experience in serving minorities (i.e., previous housing/services to minorities was equal to or greater than the percentage of minorities in the jurisdiction where the previous housing/service experience occurred *AND* has direct experience in serving the client group proposed to be served in the application . | _____ | (3) |
| Applicant has previous experience in serving minorities, BUT previous housing/services to minorities was less than the percentage of minorities in the jurisdiction where the previous service experience occurred ..... | _____ | (1) |
| Applicant does not have experience in serving minorities . | _____ | (0) |

2. Minority Business Enterprise/Women Business Enterprise Experience (MBE/WBE)

| | | |
|---|---|---|
| Applicant has substantial prior MBE and WBE experience (awarded services or other contracts over $10,000) ..... | _____ | (2) |
| Applicant has substantial prior MBE or WBE experience (awarded services or other contracts over $10,000) ..... | _____ | (1) |
| Applicant does not have significant MBE/WBE experience ..... | _____ | (0) |

## II. Application Process

### *A. Obtaining Application Packages*

CHSP applications can be obtained ONLY from the Multifamily Housing Clearinghouse at 1–800–685–8470. The Clearinghouse must be called regardless of whether the potential applicant is considering HUD projects or RHCDS projects. Applications will not be available to applicants directly from HUD Headquarters or State and Area Offices or from RHCDS Headquarters or State Offices.

The application packages will be available from May 10, 1995 through July 10, 1995.

### *B. Application Requirements*

All applications must contain the following information, in such form and in such detail as HUD/RHCDS require in the application package:

**Part A: Applicant Information**

1. SF–424, ''Request for Federal Assistance''

*General Information*

Exhibit 1: Applicant information
Exhibit 2: Evidence of Eligibility
Exhibit 3: List of Applications submitted to other HUD State or Area/RHCDS State Offices
Exhibit 4: Applicant Experience Statement

*Disclosures and Certifications*

Exhibit 5: HUD–2880, ''Applicant/Recipient Disclosure/Update Report''
Exhibit 6: Applicant's Anti-lobbying Certifications (certification for Grants, Loans, Contracts and Cooperative Agreements and SF–LLL, ''Disclosure Form to Report Lobbying'')
Exhibit 7: Applicant Certifications (SF–424B ''Assurances, Non-construction Programs'', Drug-Free Workplace Certification and Civil Rights Certifications)
Exhibit 8: CHSP Blanket certification

**Part B: Project Information**

*General Information*

Exhibit 1A Applicant Identifier
Exhibit 9: Letter of Support from Area Agency on Aging/Agency Serving the Disabled
Exhibit 10: Project information
Exhibit 11: Evidence of Eligibility
Exhibit 12: Certification for HUD-Approved Budget and for use of Residual Receipts (section 202 only)
Exhibit 13: Existing Services Description

*Needs of Residents and Need for Supportive Services*

Exhibit 14: Profile of Eligible Project Residents
Exhibit 15: Description of the Need for the Supportive Services
Exhibit 16: Deinstitutionalization Plan

*Proposed CHSP Program*

Exhibit 17: Description of Proposed Services
Exhibit 18: Meals description
Exhibit 19: Implementation Start-up Schedule
Exhibit 20: Participant Fees Calculation Form
Exhibit 21: Budget Forms:
—HUD–91178—''Annual Program Budget, Applicant'',
—HUD–91179—''Summary Budget, Five-Year Projection'', and,
—HUD–91180—''Summary Budget, Applicant''

*Matching Funds*

Exhibit 22: Summary Form for Match
Exhibit 23: Match Letters
Exhibit 24: Documentation of Residual Receipts (NOT for use of Public/Indian Housing Agencies)

*Professional Assessment Committee (PAC)*

Exhibit 25: Qualification of PAC members

For applicant's information, the application package contains a copy of the Joint Common Rule and three Attachments:

—Attachment 1: CHSP Questions and Answers;
—Attachment 2: Discussion of Service Coordinator; and,
—Attachment 3: Instructions for Completing Budget Forms

### *C. Packaging of Applications*

Applications must be submitted on the basis of ''one application—one project.'' A HUD PHA/IHA project is defined either by number or by distinct building name; HUD Multifamily and RHCDS projects are defined by a project number and/or a Section 8 contract

number. The applicant's portion of the application submission is ''Part A'' and the project's portion of the application with project and program information is ''Part B.''

RHCDS applicants must submit an original ''Part A and one or more Part Bs'' to RHCDS Headquarters; a copy of each Part A and Part B must be submitted to the appropriate RHCDS State Offices.

An applicant submitting one application for one project only must submit one Part A and one Part B. (For example, the Smalltown Housing and Redevelopment Authority submits one application for one project ''Pleasant Valley Towers'' to the HUD Omaha State Office. That application must contain one Part A and one Part B.)

Applicants submitting applications for multiple projects must submit a separate application for each project, in each jurisdiction in which it is submitting applications.

However, for multiple applications from the same applicant in the same jurisdiction, only one copy of Part A is submitted. Thus, an applicant submitting three applications in one jurisdiction must submit one Part A and three Part Bs (e.g., the North Carolina Office on Aging is submitting three applications for three HUD projects to the HUD Greensboro Office. It submits one Part A to that office, with a Part B for each of the three separate projects.)

However, if an applicant is submitting applications to more than one HUD State or Area Office or RHCDS State Office or to both HUD and RHCDS, it must submit one ''Part A'' and the appropriate number of ''Part Bs'' in each jurisdiction. For example, the Ohio Office of Aging is submitting two applications for two HUD projects to the Cleveland HUD Office, one application for one HUD project to the Columbus HUD Office and one RHCDS application to the RHCDS Columbus State office. An original Part A must be submitted to each of the three Offices, with two Part Bs to the Cleveland Office, one Part B to the HUD Columbus Office and one Part B to the RHCDS Columbus Office.

Each Part A and each Part B must be in separate folders. Each Part must be appropriately tabbed and numbered according to the instructions in the Application Package.

*D. Submission of Applications*

1. Submission of Applications to HUD

All applicants shall submit an original and three copies (a FAX copy of the application is NOT acceptable) of the CHSP application to the Director of Multifamily Housing in the HUD State or Area Office which has jurisdiction over the project at the address noted in Attachment 1 of the NOFA by 3 P.M., Local Time, on or before July 10, 1995.

In the case of IHAs, the submission is to the Director of Multifamily Housing in the HUD State or Area Office in which is located the Office of Native American Programs which has jurisdiction over that project. The deadline date is firm as to date and hour.

In the interest of fairness to all applicants requesting CHSP funds, HUD will treat as ineligible for consideration any request which is received after the deadline.

Applicants making requests for CHSP funds should take this practice into account and make early submission of their materials to avoid any risk of lost eligibility brought about by unanticipated delivery-related problems.

Applications received after the date and time stated herein will not be accepted, and will be returned to the applicant.

Each application package must be identified on the envelope or wrapper as follows:

Director of Housing/Director of Multifamily CHSP FY 1995 Application Package, Due by 3 P.M., Local Time, July 10, 1995.

Determination whether an application is received in a timely manner is solely the responsibility of the receiving HUD State or Area Office.

2. Submission of Applications to RHCDS

All applicants shall submit an original and TWO copies (a FAX copy of the application is NOT acceptable) of the CHSP application to RHCDS Headquarters by 3 P.M., Eastern Daylight Time, on or before July 10, 1995. The deadline date is firm as to date and hour. The address is: U.S. Department of Agriculture, Rural Housing and Community Development Service, Attn: Sue M. Harris-Green, South Building, Room 5343, 14th and Independence Avenue SW., Washington, DC 20250.

One copy of the application must also be submitted to the RHCDS State Office which has jurisdiction over the project.

In the interest of fairness to all applicants requesting CHSP funds, the RHCDS will treat as ineligible for consideration any request which is received by RHCDS Headquarters after the deadline.

Applicants making requests for CHSP funds should take this practice into account and make early submission of their materials to avoid any risk of lost eligibility brought about by unanticipated delivery-related problems.

Applications received after the date and time stated herein will not be accepted, and will be returned to the applicant.

Each application package must be identified on the envelope or wrapper as follows:

CHSP FY 1995 Application Package, Due by 3 P.M., Eastern Daylight Time July 10, 1995.

Determination whether an application is received in a timely manner is solely the responsibility of RHCDS Headquarters. The decision of that Office is not subject to appeal.

*E. Eligibility Review*

HUD State and Area Office/RHCDS State Office staff will review all timely applications for eligibility. Both applicants and projects will be reviewed to determine that the applicant entity and the project included in the application, if different, are eligible under the terms of this NOFA and the common rule to participate in the FY 1995 CHSP.

Applicants must submit a copy of their charter or by-laws as evidence of their legal status and of their authority to run a CHSP, or evidence of non-profit status as a local non-profit housing sponsor. Applicants that are applying as local non-profit housing sponsors or PHA/IHAs must ALSO submit proof of ownership of the project submitted in the application.

Applicants must also submit proof of project eligibility. The regulatory agreement or the HAP contract may be submitted as evidence of the project's eligibility.

All documentation of eligibility or ownership must have been executed and dated on or before the application deadline.

Eligibility will also include determination that the application was submitted to the appropriate HUD or RHCDS Office.

Applicants and/or projects which are not eligible or have been submitted to the incorrect HUD State or Area Office/ RHCDS State Office will be rejected and so notified by the appropriate office at this time. Applications which pass eligibility review will proceed to threshold/technical deficiency review. If eligibility material is missing, it will be treated as a deficiency, subject to Sections II.F(4) and III below.

*F. Threshold and Technical Deficiency Review*

1. General: HUD State or Area Offices/ RHCDS Headquarters staff will review

applications for threshold and technical acceptability concurrently.

2. First, each application will be checked for completeness. Any application missing three or more exhibits other than certifications will be rejected by the HUD State or Area Office/RHCDS Headquarters, with the applicant being notified.

3. Second, the applications will be checked for threshold eligibility. During this review, an applicant (or project in the case of an application from a governmental jurisdiction) will be rejected if:

a. The project is not 85 percent occupied;

b. It has not met the match requirement (i.e., there is a lack of clear and documented evidence of a commitment for funds equal to no less than 50 percent for the supportive services from the applicant or project owners, or from third party providers, for the first year of the five-year grant).

Indicators of clear and documented evidence are: (i) there is a separate match letter on letterhead of the provider of the matching funds; (ii) match letters show committed dollar levels at least equal to the dollar level in the first year budget; (iii) the match items provided are firm commitments not contingent upon any other action (e.g., state or county legislation, board of directors or local county legislation/approval); and (iv) for match other than in-kind (see 59 FR 22220, published April 29, 1994, sections 700.235(d)(2)(iii) or 1944.260(d)(2)(iii)), the required certification for new or expanded services is included.

c. It has not submitted a participant fee-collection plan that proposes to collect at least 10 percent of the cost of the CHSP (up to 20 percent of the adjusted incomes of the participants or the cost of providing the services, whichever is less).

d. The proposal includes a retrofit or renovation component in the budget subject to section 802(a)(2) of the Act.

e. The meals program does not provide at least one hot meal a day in a group setting *SEVEN* days a week, for some or all of the participants. (The meals program may be an existing program; it may be funded fully or in part with funds *other* than the CHSP.)

f. A service coordinator is NOT included as part of the services program. (The coordinator may be paid fully or in part from funds other than the CHSP.)

g. There is:

—a pending civil rights suit against the applicant (or project owner, if different) brought by the Department of Justice;

—an outstanding finding of non-compliance as a result of formal administrative proceedings under any of the statutes, regulations, or other requirements listed in the civil rights certification, unless the applicant is operating under a HUD-approved compliance agreement designed to correct the area(s) of noncompliance, or, in cases of noncompliance with state or local statutes, regulations or other requirements, is operating under a compliance agreement approved by the appropriate state or local agency designed to correct the area(s) of non-compliance.

—a charge issued by the Secretary concerned against the applicant (or project owner, if different) under Section 810(g) of the Fair Housing Act as implemented by 24 CFR 103.400.

—a pending denial of application processing by HUD or by RHCDS under Title VI of the Civil Rights Act of 1964, under the Attorney General's guidelines (28 CFR 50.3), or the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1), or under Section 504 of the Rehabilitation Act of 1973 and the HUD Section 504 regulations (24 CFR 8.57); or,

—an adjudication adverse to the applicant (or the project owner, if different) of a civil rights violation in a civil action brought against it under any of the statutes, regulations or other requirements listed in the civil rights certification, unless the sponsor is operating in compliance with a court order designed to correct the area(s) of noncompliance.

h. There exist serious, unaddressed or outstanding Inspector General audit findings or HUD Headquarters/State or Area Office/RHCDS State Office management monitoring review findings for any of the applicant's (or project's, if different) ongoing management operations or in connection with its administration of existing grants;

i. There exist serious, unaddressed or outstanding Inspector General audit findings or HUD Headquarters/State or Area Office/RHCDS State Office FH&EO monitoring review findings for any of the applicant's (or project's, if different) ongoing management operations or in connection with its administration of existing grants; or,

j. The applicant (or project owner, if different) is involved with litigation which could seriously jeopardize its ability to administer the CHSP.

If an applicant (or project within an application) is determined to be the subject of a rejection on the basis of one or more of the above criteria, the HUD State or Area Office or RHCDS Headquarters staff shall reject the application; the review cannot be completed nor the application scored.

If the applicant agency is a governmental jurisdiction supporting one or more projects in multiple applications and the applicant agency is rejected, all projects submitted by that applicant agency will be disqualified. However, any individual project may be rejected without disqualifying the applicant agency, if it is a different legal entity. For example, ''River Homes'' (a section 202 project) and ''Tower House'' (a section 236 project) are the two projects in two applications submitted by the Westchester County, NY, Area Agency on Aging. ''River House'' is rejected for insufficient match. As the project is a different legal entity than the applicant, the other application submitted by that same applicant may still be processed.

All applicants whose application(s) have been rejected by HUD State or Area Offices or RHCDS Headquarters will be notified that they have been rejected, in writing, at the time the decision to reject is made.

4. Third, applicants will be reviewed for technical completeness (deficiency review).

During the technical review process, if HUD or RHCDS determines that an application is missing up to two exhibits (other than certifications), or has certain technical deficiencies, the applicant will be given 14 calendar days from the date of written notification in which to correct such deficiencies.

The purpose of this process is to assist an applicant in completing a fundable proposal, and not to provide an opportunity for an application to be substantively improved, once it has been submitted. Curable, technical deficiencies relate to submission of a limited number of missing items, submission of items that are not necessary for HUD review under threshold review or selection criteria/ranking factors, e.g., a missing certification, inadvertent blank spot in certain forms and certifications or missing signature; substantive items for which information exists elsewhere in the application showing that the items have been created (e.g., an annual first year budget summary is missing, but there are sufficient program budgets to determine what the annual budget is; or revision of match letters to include missing data, when the amount of resources is clearly indicated); or, missing match letters in certain instances (see next paragraph).

Submission of missing items or correction of technical deficiencies does not allow additional time to complete,

amend or correct the application to overcome any substantive defects in the original submission. Thus, missing match letters, or corrected match letters adding the required certification of new or expanded qualifying resources must be submitted together with proof that the match was available to the applicant on or before the application deadline (e.g., copy of dated Board resolution approving the allocation of the match dollars). Also, missing documents dealing with applicant or project eligibility (e.g., articles of incorporation) must be dated on or before the application deadline date.

The HUD State or Area Office or RHCDS Headquarters will request documents as necessary to correct technical deficiencies in any CHSP application. (A FAX copy of an original document may NOT be submitted to meet any technical deficiency correction request.) A response to a letter request from HUD or RHCDS to an applicant for correction of technical deficiencies must be received by the requesting HUD State or Area Office/RHCDS Headquarters, by 3:00 P.M., Local Time on the 14th calendar day following the date on the request letter to the applicant. This means (for example) that if the deficiency letter to the applicant is dated July 30, 1995, the response must be received by 3:00 P.M., Local Time, in the HUD State or Area Office or RHCDS Headquarters on August 13, 1995. Information provided after 3:00 P.M. on the fourteenth day of the correction period will be rejected as non-responsive. In any such situation, the application, or the appropriate project, will be rejected.

All applicants are encouraged to review the Table of Contents provided in the application package. The Table of Contents identifies all technical exhibits needed for application processing. Filling in the appropriate page number indicates that the exhibit has been prepared.

5. HUD/RHCDS reserves the right to reduce the amount of funding requested in any application. Examples of reasons to reduce initial funding requests during HUD State or Area Office/RHCDS Headquarters review include, but are not limited to:

(a) Activities proposed in any project are not eligible or not approved by HUD or RHCDS; (b) HUD or RHCDS determines that the cost of any particular component of a proposed program is more than necessary to make the activity feasible; and, (c) the cost of the grant is reduced to meet the funding limits of Section I.C(5).

Reductions may take place in the State or Area Offices as part of the review process.

6. Once threshold and technical reviews have been completed, HUD State or Area Offices, or the RHCDS Headquarters (as appropriate) will score all selection criteria.

HUD State or Area Offices will rank-order all applications by score and submit the scores and other required information to HUD Headquarters.

*G. Final Selection*

1. All eligible applications, other than those noted as rejects, will be rank-ordered by score in either the RHCDS Headquarters or by HUD Headquarters, within the geographic areas.

2. Final Reductions in Funding Within Applications

HUD/RHCDS reserves the right to additionally reduce the amount of funding requested in any application at time of selection to reduce the cost of the grant to meet the funding limits of Section I.C(5).

Reductions may also take place after selection and announcement of award, as part of final negotiations.

3. Ranking of Projects

a. Ranking of RHCDS Projects

RHCDS Headquarters will select applicants by rank-order until all CHSP funds allocated have been exhausted. If there is more than one unfunded application at the next-highest score (in a tie) and there are insufficient funds to cover both, funding will be decided subject to section II.F.4, below. Further selections will be made until any residual funds are insufficient to fund another RHCDS project.

If there is a residual amount after all eligible applications in rank order are funded, the next application(s) on the list which contain funding requests above the level of the residual may be skipped over to reach a fundable project lower down on the list which is within the level of the residual amount. The first remaining fundable but unfunded project on the list which is within the residual limit must be funded, as well as any subsequent projects which are still within any remaining residual.

If funds remain available after ranking all the approvable RHCDS projects, these funds will be utilized by HUD Headquarters for reallocation to HUD projects which were approvable but unfunded (see subsection II.G(3)(b), below). The RHCDS Headquarters reserves the right to reduce any proposed amount of CHSP funds requested.

b. Ranking of HUD projects

HUD Headquarters will integrate all scored applications within each designated geographic area by rank-order and select applicants in score order in each geographic area until the funds allotted to that geographic area are exhausted.

If there is more than one unfunded application at the next-highest score (in a tie) and there are insufficient funds to cover both, funding will be decided subject to section II.G.4, below. Further selections will be made until any residual funds are insufficient to fund another HUD project.

If there is a residual amount after most eligible applications are funded in rank order, the next application(s) on the list which contain funding requests above the level of the residual may be skipped over to reach a fundable project lower down on the list which is within the level of the residual amount. The first remaining fundable but unfunded project on the list which is within the residual limit must be funded, as well as any subsequent projects which are still within any remaining residual.

If there are excess funds in one or more geographic areas, Headquarters will fund in score order additional eligible but unfunded projects from other geographic areas in which there were too many projects to fund from within the initial allocation, consistent with Section II.G(4), below.

If there are insufficient fundable applications, any excess funds will be made available to approvable but unfunded RHCDS applicants.

4. Tie Scores

In the event of a tie score among the last-to-be-considered applications in either RHCDS Headquarters or in a HUD geographic area allocation, the application that scores higher on Selection Criteria Numbers b, f, g, and i will be selected, if that application is within the limits of the remaining dollars or can be so modified. If there is still a tie score among two or more applications, one of the tied applications will be selected by lottery.

5. Multi-project Grants

HUD and RHCDS reserve the right to aggregate into one grant award multiple applications from a single applicant in any jurisdiction.

6. Self-Monitoring

HUD and RHCDS reserve the right to require self-monitoring of those applications approved for States, Indian tribes and units of general local government (NOT PHA/IHAs). In such cases, HUD/RHCDS will add an amount

equal to one percent of the total HUD grant approved, for monitoring costs, under which certain responsibilities will be delegated to that agency subject to 24 CFR 700.325 or 7 CFR 1944.270. As this is a HUD or RHCDS-directed add-on, it may bring the total award granted to more than the limit stated in section I.C(5).

7. Excess Funds

In the event that funds still remain after completion of the selection process, such funds will be allotted to the HUD Headquarters Reserve Fund, subject to 59 FR 22220 (sections 700.405 or 1944.278), published on April 29, 1994.

*H. Awarding of Grants*

Once selections are made, the HUD State or Area Offices will issue funding letters to selected applicants. Each applicant must sign and return the letter within the indicated time period to signify acceptance of the award. Subsequent to receipt of the signed acceptance, HUD State or Area Offices or RHCDS Headquarters, as appropriate, will negotiate the final terms, conditions and amount of the grant with the selected applicant. Once agreement is reached on all issues, a grant award will be prepared and sent to the applicant for signature by the HUD State or Area Office. Once the signed grant award is returned to HUD, it will be executed by an appropriate HUD Official.

## III. Checklist of Application Submission Requirements

The checklist specifies the required information that must be submitted as part of an application, and identifies those materials necessary to pass eligibility and threshold requirements. Other items including forms and certifications may be corrected during the technical deficiency correction period, subject to Section II.F(4) of this Notice.

The Checklist is the Table of Contents in the application package; the check is done by filling in the appropriate application page number in the blank space.

## IV. Other Matters

*A. Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

*B. Family Executive Order*

The General Counsel of HUD, as the Designated Official under Executive order 12606, The Family, has determined that the policies contained in this NOFA will have some significant impact on the maintenance and general well-being of families. The revised CHSP can be expected to provide supportive services which can prevent or postpone unnecessary or premature institutionalization, and reduce unnecessary stress and financial burdens on participants' families by allowing them to remain in their apartments. Because the impact on family concerns is wholly beneficial, no further review under the executive order is considered necessary.

*C. Federalism Executive Order*

The General Counsel of HUD, as the Designated Official under section 6(a) of the Executive order 12612, Federalism, has determined that the policies contained in this NOFA do not have Federalism implications, and, thus, are not subject to review under the order. These guidelines are limited to providing the procedures under which HUD would make rental assistance available to applicants under a program designed to provide housing assistance and supportive services to frail elderly individuals. The program involves intergovernmental cooperation, but in no manner will involve federal incursion upon local or state decision making, or the administration of local or state law.

*D. Section 102 of the HUD Reform Act—Accountability in the Provision of HUD Assistance*

1. Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five year period beginning not less than thirty days after the award for assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b) and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (form HUD–2880) submitted in connection with this NOFA. Update reports (also form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (95 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on disclosure requirements.)

3. Subsidy-Layering Determinations

24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than necessary to make the assisted activity feasible after taking into account other government assistance. HUD will make the decision with respect to each certification available free of charge, for a three-year period. (See the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) and the guidelines published in the **Federal Register** on February 25, 1994 (59 FR 9332) for further information on this certification.) Additional information about applications, HUD certifications and assistance adjustments, both before assistance is provided or subsequently are to be made under the Freedom of Information Act (24 CFR part 15).

*E. Section 103 of the HUD Reform Act—Prohibition of Advance Disclosures of Funding Decisions*

HUD's regulation implementing section 103 of the Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. Also, refer to (58 FR 61016), a final rule amending part 4 regarding the regulations of certain conduct by HUD employees and by applicants for HUD assistance during the selection process

for the award of financial assistance by HUD.

HUD and RHCDS employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD or RHCDS) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD or RHCDS employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her State or Area Office Counsel, or Headquarters counsel for the program to which the question pertains.

*F. Section 112 of the HUD Reform Act*

Section 13 of the Department of Housing and Urban Development Act (section 112 of the Reform Act) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912), as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to: Acting Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD Office.

*G. Prohibition Against Lobbying Activities*

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87 and 7 CFR part 1944, Subpart G, applicants, recipients, and a subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

IHAs established by an Indian tribe as a result of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are NOT excluded from the Statute's coverage.

*Required Reporting*

A certification is required at the time application for funds is made that Federally appropriated funds are not being or have not been used in violation of section 319 and the disclosure will be made of payments for lobbying with other than federally appropriated funds. Also, there is a standard disclosure form, SF–LLL, ''Disclosure Form to Report Lobbying'', which must be used to disclose lobbying with other than Federally appropriated funds at the time of application.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program title and number is 14.170, Congregate Housing Services Program.

**Authority:** Section 802, Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8012).

Section 604 and 672, Housing and Community Development Amendments of 1992 (Pub. L. 102–550).

Dated: May 4, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

BILLING CODE 4210–27–P

Attachment 1

Office of Multifamily Housing Programs
451 7th Street, S.W.
Room 6106
Washington, DC 20410

# Directory Of Field Staff

April 6, 1995

BILLING CODE 4210–27–C

**New England**

Cas Kolaski—1AH
Housing Director
Massachusetts State Office
Thomas P. O'Neill Jr. Federal Office Building
10 Causeway Street
Boston, MA 02222–1092
Phone Number: (617) 565–5102
FAX Number:
CC Mail Address: BOSTPOST

Jeanne McHallam—1AHM
Multifamily Housing Director
Massachusetts State Office
Thomas P. O'Neill Jr. Federal Office Building
10 Causeway Street
Boston, MA 02222–1092
Phone Number: (617) 565–5154
FAX Number:
CC Mail Address: BOSTPOST4

Robert S. Donovan—1EHM
Multifamily Housing Director
Connecticut State Office
First Floor
330 Main Street
Hartford, CT 06106–1860
Phone Number: (203) 240–4523
FAX Number:
CC Mail Address: HARTPOST

Loren Cole—1FHM
Acting Multifamily Housing Director
New Hampshire State Office
Norris Cotton Federal Building
275 Chestnut Street
Manchester, NH 03101–2487
Phone Number: (603) 666–7755
FAX Number: (603) 666–7697
CC Mail Address: MANCHPOST

Luisa Osborne—1GHM
Multifamily Housing Director
Rhode Island State Office
10 Weybosset Street
Sixth Floor
Providence, RI 02903–3234
Phone Number: (401) 528–5354
FAX Number:
CC Mail Address:

**New York/New Jersey**

Gerard W. Sheridan—2AH
Housing Director
New York State Office
26 Federal Plaza
Room 32–130
New York, NY 10278–0068
Phone Number: (212) 264–0777 ext: 3701
FAX Number: (212) 264–1277
CC Mail Address: NYNPOSTI

Beryl H. Niewood—2AHM
Acting Multifamily Housing Director
New York State Office
26 Federal Plaza
Room 32–130
New York, NY 10278–0068
Phone Number: (212) 264–0777 ext: 3716
FAX Number: (212) 264–1277
CC Mail Address: NYNPOST

Kenneth J. Lobene—2CHM
Multifamily Housing Director
Buffalo Area Office
Lafayette Court
465 Main Street, Fifth Floor
Buffalo, NY 14203–1780
Phone Number: (716) 846–5722
FAX Number: (716) 846–3252
CC Mail Address: BUFPOST

Encarnacion C. Loukatos-2FHM
Multifamily Housing Director
New Jersey State Office
One Newark Center
Thirteenth Floor
Newark, NJ 07102–5260
Phone Number: (201) 622–7900 ext: 3400
FAX Number: (201) 645–2271
CC Mail Address: NJNPOST

**Mid-Atlantic**

Sidney B. Severe-3AH
Housing Director
Pennsylvania State Office
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107
Phone Number: (215) 656–0503
FAX Number: (215) 656–3427
CC Mail Address: PHIPOST3

Thomas Langston-3AHM
Multifamily Housing Director
Pennsylvania State Office
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107
Phone Number: (215) 656–0548
FAX Number: (215) 656–3427
CC Mail Address: PHIPOST

Ina B. Singer-3BHM
Multifamily Housing Director
Maryland State Office
City Crescent Building
10 South Howard Street, Fifth Floor
Baltimore, MD 21201–2505
Phone Number: (410) 962–2520 ext: 3125
FAX Number: (410) 962–4378
CC Mail Address: BALPOST

Fred S. Roncaglione-3CHM
Multifamily Housing Director
West Virginia State Office
405 Capitol Street
Suite 708
Charleston, WV 25301–1795
Phone Number: (304) 347–7037
FAX Number: (304) 347–7050
CC Mail Address: CHAPOST

Edward J. Palombizio-3EHM
Multifamily Housing Director
Pittsburgh Area Office
Old Post Office Courthouse Building
710 Grant Street
Pittsburgh, PA 15219–1939
Phone Number: (412) 644–6394
FAX Number: (412) 644–6499
CC Mail Address: PITPOST

Charlie Famuliner-3FHM
Multifamily Housing Director
Virginia State Office
The 3600 Centre
3600 West Broad Street
Richmond, VA 23230–0331
Phone Number: (804) 278–4505
FAX Number:
CC Mail Address: RICPOST

Felicia Williams-3GHM
Multifamily Housing Director
District of Columbia Office
820 First Street, N.E.
Washington, DC 20002–4205
Phone Number: (202) 275–4726
FAX Number:
CC Mail Address: WASPOST

**Southeast**

Charles E. Gardner—4AH
Housing Director
Georgia State Office
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, GA 30303–3388
Phone Number: (404) 331–4127
FAX Number: (404) 730–2364
CC Mail Address: ATLPOST

Robert W. Reavis—4AHMM
Multifamily Housing Director
Georgia State Office
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, GA 30303–3388
Phone Number: (404) 331–4426
FAX Number: (404) 730–2240
CC Mail Address: ATLPOST

Herman S. Ransom—4CHM
Multifamily Housing Director
Alabama State Office
Beacon Ridge Tower
600 Beacon Parkway, West-Suite 300
Birmingham, AL 35209–3144
Phone Number: (205) 290–7667
FAX Number: (205) 290–7632
CC Mail Address: BIRPOST

Minerva Bravo—4NHM
Multifamily Housing Director
Caribbean Office
New San Juan Office Building
159 Carlos Chardon Avenue, Room 204
Hato Rey, PR 00918–1804
Phone Number: (809) 766–5106
FAX Number: (809) 766–5522
CC Mail Address: SJUPOST

Robert A. Rifenberick—4EHM
Multifamily Housing Director
South Carolina State Office
Strom Thurmond Federal Building
1835 Assembly Street
Columbus, SC 29201–2480
Phone Number: (803) 253–3240
FAX Number: (803) 253–3424
CC Mail Address: COLPOST

Daniel A. McCanless—4FHM
Multifamily Housing Director

North Carolina State Office
Koger Building
2306 West Meadowview Road
Greensboro, NC 27407–3707
Phone Number: (910) 547–4020
FAX Number: (910) 547–4120
CC Mail Address: GREPOST

Reba G. Cook—4GHM
Multifamily Housing Director
Mississippi State Office
Doctor A. H. McCoy Federal Building
100 West Capitol Street, Suite 910
Jackson, MS 39269–1016
Phone Number: (601) 965–4700
FAX Number:
CC Mail Address: JACPOST

Wendy Gruel—4HH
Acting Housing Director
Jacksonville Area Office
Southern Bell Tower
300 West Bay Street, Suite 2200
Jacksonville, FL 32202–5121
Phone Number: (904) 232–3197
FAX Number: (904) 232–2217
CC Mail Address: JKVPOST

Ferdinand Juluke—4HH
Multifamily Housing Director
Jacksonville Area Office
Southern Bell Tower
300 West Bay Street, Suite 2200
Jacksonville, FL 32202–5121
Phone Number: (904) 232–3528
FAX Number: (904) 232–2731
CC Mail Address: JKVPOST

James H. Martin—4PPP
Chief Asset Management Branch
Miami/South Dade Area Office
10710 South West 211 Street
Miami, FL 33189
Phone Number: (305) 238–2851
FAX Number:
CC Mail Address: DADEPOST

William S. McClister—4JHM
Multifamily Housing Director
Knoxville Area Office
John J. Duncan Federal Building
710 Locust Street, Third Floor
Knoxville, TN 37902–2526
Phone Number: (615) 545–4406
FAX Number: (615) 545–4578
CC Mail Address: KNXPOST

R. Brooks Hatcher—4IHM
Multifamily Housing Director
Kentucky State Office
601 West Broadway
P.O. Box 1044
Louisville, KY 40201–1044
Phone Number: (502) 582–6124
FAX Number: (502) 582–6074
CC Mail Address: LOUPOST

Ed M. Phillips—4LHM
Acting Multifamily Housing Director
Tennesee State Office
251 Cumberland Bend Drive
Suite 200
Nashville, TN 37228–1803
Phone Number: (615) 736–5365
FAX Number: (615) 736–2018
CC Mail Address: NASPOST

**Midwest**

Beverly Bishop—5AH
Housing Director
Illinois State Office
Ralph Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, IL 60604–3507
Phone Number: (312) 353–6950
FAX Number: (312) 353–5164
CC Mail Address: CHIPOST

Edward Hinsberger—5AHM
Acting Multifamily Housing Director
Illinois State Office
Ralph Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, IL 60604–3507
Phone Number: (312) 353–9174
FAX Number: (312) 353–9563
CC Mail Address: CHIPOST01

Patricia A. Knight—5CHM
Multifamily Housing Director
Cincinnati Area Office
Federal Office Building
Room 9002
Cincinnati, OH 45202–3253
Phone Number: (513) 684–2133
FAX Number: (512) 684–6224
CC Mail Address: CINPOST

Michael P. Kulick—5DHM
Acting Multifamily Housing Director
Cleveland Area Office
The Renaissance on Playhouse Square
1350 Euclid Avenue, Suite 500
Cleveland, OH 44115–1815
Phone Number: (216) 522–4112
FAX Number: (216) 522–2975
CC Mail Address: CLEPOST

Donald Jakob—5EHM
Multifamily Housing Director
Ohio State Office
200 North High Street
Columbus, OH 43215–2499
Phone Number: (614) 469–2156
FAX Number: (614) 469–2432
CC Mail Address: CLBPOST

Robert Turner—5FH
Housing Director
Michigan State Office
Patrick V. McNamara Federal Building
477 Michigan Avenue
Detroit, MI 48226–2592
Phone Number: (313) 226–6337
FAX Number:
CC Mail Address: DETPOST

Robert M. Brown—5FHM
Multifamily Housing Director
Michigan State Office
Patrick V. McNamara Federal Building
477 Michigan Avenue
Detroit, MI 48226–2592
Phone Number: (313) 226–7107
FAX Number: (313) 226–5737
CC Mail Address: DETPOST

John Milchick—5GHM
Multifamily Housing Director
Grand Rapids Area Office
2922 Fuller Avenue, N.E.
Grand Rapids, MI 49505–3499
Phone Number: (616) 456–2122
FAX Number: (616) 456–2191
CC Mail Address: GRAPOST

Henry Levandowski—5HHM
Multifamily Housing Director
Indiana State Office
151 North Delaware Street
Indianapolis, IN 46204–2526
Phone Number: (317) 226–6305
FAX Number: (317) 226–7026
CC Mail Number: INDPOST

Gladys A. Kane—5IHM
Multifamily Housing Director
Wisconsin State Office
Henry S. Reuss Federal Building
310 West Wisconsin Avenue, Suite 1380
Milwaukee, WI 53203–2289
Phone Number: (414) 297–3159
FAX Number: (414) 297–3946
CC Mail Address: MILPOST

Howard Goldman—5KHM
Multifamily Housing Director
Minnesota State Office
220 Second Street, South
Minneapolis, MN 55401–2195
Phone Number: (612) 370–3051
FAX Number: (612) 370–3090
CC Mail Address: STPPOST

**Southwest**

James E. Hicks—6AH
Housing Director
Texas State Office
1600 Throckmorton
P.O. Box 2905
Fort Worth, TX 76113–2905
Phone Number: (817) 565–5102
FAX Number:
CC Mail Address: FTWPOST

E. Ross Burton—6AHM
Multifamily Housing Director
Texas State Office
1600 Throckmorton
P.O. Box 2905
Fort Worth, TX 76113–2905
Phone Number: (817) 885–5967
FAX Number: (817) 885–6083
CC Mail Address: FTWPOST

Robert L. Salazar—6BHML
Chief Asset Management Branch
New Mexico State Office
625 Truman Street, N.E.
Albuquerque, NM 87110–6443
Phone Number: (505) 262–6272
FAX Number: (505) 262–6004
CC Mail Address: ABQPOST

Robert L. Greene—6CHML
Chief Asset Management Branch
Dallas Area Office
525 Griffin Street, Room 860
Dallas, TX 75202–5007
Phone Number: (214) 767–8372
FAX Number:
CC Mail Address: DALPOST

Albert J. Cason—6EHM
Multifamily Housing Director
Houston Area Office
Norfolk Tower
2211 Norfolk, Suite 300
Houston, TX 77098–4096
Phone Number: (713) 834–3200
FAX Number: (713) 834–3305
CC Mail Address: HOUPOST

Elsie L. Whitson—6FHM
Multifamily Housing Director
Arkansas State Office
TCBY Tower
425 West Capitol Avenue, Suite 900
Little Rock, AR 72201–3488
Phone Number: (501) 324–5937
FAX Number: (501) 324–5900
CC Mail Address: LRKPOST

Ann C. Kizzier—6HHM
Multifamily Housing Director
Louisiana State Office
Fisk Federal Building
1661 Canal Street
New Orleans, LA 70112–2887
Phone Number: (504) 589–6834
FAX Number: (504) 589–6526
CC Mail Address: NORPOST

Multifamily Housing Director—6IHM
Oklahoma State Office
500 West Main St., Suite 400
Oklahoma City, OK 73102
Phone Number: (405) 231–5968
FAX Number: (405) 231–4510

Carmen P. Casas—6JHM
Multifamily Housing Director
San Antonio Area Office
Washington Square
800 Delorosa Street
San Antonio, TX 78207–4563
Phone Number: (210) 229–4910
FAX Number: (210) 229–4984
CC Mail Address: SANPOST

Anthony J. Hernandez—6KHMLM
Chief Asset Management Branch
Shreveport Area Office
401 Edwards Street
Suite 1510
Shreveport, LA 71101–3107
Phone Number: (318) 676–3393
FAX Number: (318) 676–3408
CC Mail Address: SHRPOST

Faye O'Connor—6LHML
Chief Asset Management Branch
Tulsa Area Office
50 East 15th Street
Tulsa, OK 74119–4030
Phone Number: (918) 581–7456
FAX Number: (918) 581–7440
CC Mail Address: TULPOST

**Great Plains**

Gerald F. Hayes—7AH
Housing Director
Kansas/Missouri State Office
Gateway Tower II
400 State Avenue, Room 200
Kansas City, KS 66101–2406
Phone Number: (913) 551–6812
FAX Number: (913) 551–6812
CC Mail Address: KANPOST

Joan Knapp—7AHM
Multifamily Housing Director
Kansas/Missouri State Office
Gateway Tower II
400 State Avenue, Room 200
Kansas City, KS 66101–2406
Phone Number: (913) 551–5504
FAX Number: (913) 551–6818
CC Mail Address: KANPOST

Donna M. Davis—7BHM
Multifamily Housing Director
Iowa State Office
Federal Building
210 Walnut Street, Room 239
Des Moines, IA 50309–2155
Phone Number: (515) 284–4736
FAX Number: (515) 284–4743
CC Mail Address: DESPOST

Steven L. Gage—7DHM
Multifamily Housing Director
Nebraska State Office
Executive Tower Centre
10909 Mill Valley Road
Omaha, NE 68154–3955
Phone Number: (402) 492–3126
FAX Number: (402) 492–3184
CC Mail Address: OMAPOST

Erica Dobreff—7EH
Housing Director
St. Louis Area Office
Robert A. Young Federal Building
1222 Spruce Street, Third Floor
St. Louis, MO 63103–2836
Phone Number: (314) 539–3672
FAX Number: (314) 539–6384
CC Mail Address: STLPOST

Paul Dribin-7EHM
Multifamily Housing Director
St. Louis Area Office
Robert A. Young Federal Building
1222 Spruce Street, Third Floor
St. Louis, MO 63103–2836
Phone Number: (314) 539–6666
FAX Number: (314) 539–6384
CC Mail Address: STLPOST

**Rocky Mountain**

Ronald C. Bailey-8AH
Housing Director
Colorado State Office
633 17th Street
Denver, CO 80202–3607
Phone Number: (303) 672–5010
FAX Number: (303) 672–5048
CC Mail Address: DENPOST2

Larry C. Sidebottom-8AHM
Multifamily Housing Director
Colorado State Office
633 17th Street
Denver, CO 80202–3607
Phone Number: (303) 672–5343 ext: 1172
FAX Number: (303) 672–5048
CC Mail Address: DENPOST2

**Pacific/Hawaii**

Keith E. Axtell-9AH
Housing Director
California State Office
Phillip Burton Federal Bld. & Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102–3448
Phone Number: (415) 556–0796
FAX Number: (415) 556–8500
CC Mail Address: SFCPOST1

Janet L. Browder-9AHM
Multifamily Housing Director
California State Office
Phillip Burton Federal Bld. & Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102–3448
Phone Number: (415) 556–7317
FAX Number: (415) 556–8500
CC Mail Address: SFCPOST

Michael S. Flores-9CHM
Multifamily Housing Director
Hawaii State Office
Seven Waterfront Plaza
500 Ala Maoana Boulevard, Suite 500
Honolulu, HI 96813–4918
Phone Number: (808) 552–8185 ext: 246
FAX Number: (808) 522–8194
CC Mail Address: HONPOST

Dorothy A. Manz-9KHM
Chief Asset Management Branch
Nevada State Office
1500 East Tropricana Avenue
Suite 205
Las Vegas, NV 89119–6516
Phone Number: (702) 388–6247
FAX Number: (702) 388–6736
CC Mail Address: VEGPOST

Martha A. Littlefield-9DH
Acting Housing Director
Los Angeles Area Office
1615 West Olympic Boulevard
Los Angeles, CA 90015–3801
Phone Number: (213) 251–7122
FAX Number: (213) 251–7085
CC Mail Address: LOSPOST

Joyce Biase—9DH
Multifamily Housing Director
Los Angeles Area Office
1615 West Olympic Boulevard
Los Angeles, CA 90015–3801
Phone Number: (213) 251–7033
FAX Number: (213) 251–7085
CC Mail Address: LOSPOST

Sally G. Thomas—9EHM
Multifamily Housing Director
Arizona State Office
2 Arizona Center
400 North Fifth Street, Suite 1600
Phoenix, AZ 85004–2361
Phone Number: (602) 379–4667
FAX Number: (602) 379–4568
CC Mail Address: PHXPOST

William F. Bolton—9GHM
Multifamily Housing Director
Sacramento Area Office
777 12th Street
Suite 200

Sacramento, CA 95814–1997
Phone Number: (916) 498–5228
FAX Number: (916) 498–5247
CC Mail Address: SACPOST

Sebastian M. Adame—9HHM
Chief Asset Management Branch
San Diego Area Office
Mission City Corporate Center
2365 Northside Drive, Suite 300
San Diego, CA 92108–2712
Phone Number: (619) 557–2600 ext: 2712
FAX Number: (619) 557–6296
CC Mail Address: SDGPOST

**Northwest/Alaska**

Diana Goodwin—0AH
Housing Director
Washington State Office
Seattle Federal Office Building
909 lst Avenue
Seattle, WA 98104–1000
Phone Number: (206) 220–5200 ext. 3247
FAX Number: (206) 220–5206
CC Mail Address: SEATTLE

Willie Spearmon—0AHM
Multifamily Housing Director
Washington State Office
Seattle Federal Office Building
909 lst Avenue
Seattle, WA 98104–1000
Phone Number: (206) 220–5207 ext: 3249
FAX Number: (206) 220–5206
CC Mail Address: SEATTLE

Paul Johnson—0CHM
Multifamily Housing Director
Alaska State Office
University Plaza Building
949 East 36th Avenue, Suite 401
Anchorage, AK 99508–4399
Phone Number: (907) 271–4610
FAX Number: (907) 271–3667.
CC Mail Address: ANCHORAGE

Tom Cusack—0EHM
Multifamily Housing Director
Oregon State Office
520 Southwest Sixth Avenue
Portland, OR 97204–1596
Phone Number: (503) 326–2664
FAX Number: (503) 326–2663
CC Mail Address: PORTLAND

[FR Doc. 95–11448 Filed 5–9–95 8:45 am]
BILLING CODE 4210–27–P

federal register

Wednesday
May 10, 1995

# Part VI

# Department of Labor

## Office of the Secretary

## Job Training Partnership Act, Title IV–D, Demonstration Program: Women in Apprenticeship and Nontraditional Occupations; Notice

## DEPARTMENT OF LABOR

### Office of the Secretary

### Job Training Partnership Act (JTPA), Title IV–D, Demonstration Program: Women in Apprenticeship and Nontraditional Occupations

**AGENCY:** Women's Bureau, Department of Labor.

**ACTION:** Notice of Availability of Funds and Solicitation for Grant Applications (SGA 95–02).

**SUMMARY:** All information required to submit a proposal is contained in this announcement. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor (DOL), Women's Bureau (WB) announces a grant competition for a demonstration program using Title IV–D funds of the Job Training Partnership Act administered by the Employment and Training Administration (ETA). WB expects to award between three (3) and four (4) grants to Community-Based Organizations (CBOs) to provide technical assistance to employers, labor unions, and other nonunion labor organizations which will encourage the promotion, recruitment, selection, training, placement and retention of women in apprenticeship and other nontraditional occupations in private workplaces.

This notice describes the background, the application process, statement of work, evaluation criteria, and reporting requirements for Solicitation for Grant Applications (SGA 95–02). WB anticipates that up to a total amount of $744,000 will be available for the support of all grants using demonstration funding. The WB will provide the policy leadership in this project. Improving women's employment opportunities and other employment related equity and social issues has been the driving force of the Women's Bureau since its inception in 1920. Within the Department of Labor, the Director serves as the policy advisor on women's issues to the Secretary and other DOL agencies charged with improving the economic and workplace life of American workers.

**DATES:** One (1) ink-signed original, complete grant application (plus five (5) copies of the Technical Proposal and two (2) copies of the Cost Proposal) shall be submitted to the U.S. Department of Labor, Office of Procurement Services, Room S–5220, Reference SGA 95–02, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. EST, June 26, 1995. Hand delivered applications must be received by the Office of Procurement Services by that time.

**ADDRESSES:** Applications shall be mailed the U.S. Department of Labor, Office of Procurement Services, Attention: Lisa Harvey, Reference SGA 95–02, Room S–5220, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Lisa Harvey, Office of Procurement Services, Telephone (202) 219–6445. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This announcement consists of five parts: Part I describes the background and purpose of the demonstration program and identifies demonstration policy and topics. Part II describes the application process and provides detailed guidelines for use in applying for demonstration grants. Part III includes the Statement of Work for the demonstration projects. Part IV identifies and defines the evaluation criteria to be used in reviewing and evaluating applications. Part V describes the deliverables and reporting requirements.

### Part I. Background

Improving women's employment opportunities and other employment related equity and social issues to promote women in the work force has been the driving force of the Women's Bureau since its inception in 1920. Within the Department of Labor, the Director serves as the policy advisor on women's issues to the Secretary and other DOL agencies charged with improving the economic and workplace life of American workers.

To support the Department's activities in support of Women in Apprenticeship and Nontraditional Occupations (WANTO) Act, the Women's Bureau would like to update and expand its directory of apprenticeship and nontraditional occupations training and employment programs serving women into the ''WANTO Referral Network.'' To list your program with the Bureau's ''WANTO Referral Network,'' please provide the following information:

(1) Program Name:
(2) Administrative Agency:
(3) Address:
(4) Contact Person:
(5) Contact Telephone Number:
(6) Brief Description of Services:
(7) Eligibility:
(8) Contact Person for Employment Referrals:

Please send your response to: Women's Bureau, Office of the Secretary, WANTO Network, Room S–3317, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. (Telephone (202) 219–6626 x114)

The Women's Bureau has a history of encouraging women to consider the wide array of apprenticeable and other occupations nontraditional to women. These jobs include the traditional skilled trades such as carpenter, plumber, electrician, sheetmetal worker, or welder in the construction industry, as well as jobs in the electronics industries, other technical jobs that require computer-based skills to customize, service, build and repair precision machinery in manufacturing, and other technical computer-based jobs in the service sector industries such as health care, finance, telecommunications and transportation. In fulfilling their responsibilities to promote profitable employment opportunities for women, the Bureau of Apprenticeship and Training and the Women's Bureau have come together to jointly administer the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act and its TA grant demonstration.

The Women's Bureau co-administers WANTO with the Bureau of Apprenticeship and Training (BAT), formerly the Apprentice-Training Service. BAT was established in 1937 as the national administrative agency in the Department of Labor to carry out the objectives of the National Apprenticeship Law, guided by the recommendations of the Federal Committee on Apprenticeship. BAT has the objective to stimulate and assist industry in the development, expansion, and improvement of apprenticeship and training programs designed to provide the skilled workers required by the American economy.

The legislative mandate of the Bureau of Apprenticeship and Training—''to promote the furtherance of labor standards of apprenticeship * * * to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies in the formulation of standards of apprenticeship.'' With the WANTO technical assistance grants, BAT and the WB seek to broaden the horizons of women in apprenticeship and other nontraditional occupations in promoting a skilled work force.

Related Solicitation. This Solicitation for Grant Applications (SGA 95–02), Women in Apprenticeship and Nontraditional Occupations is complimentary to Diversity in Apprenticeship (SGA/DAA 95–004) now seeking applicants by the Bureau of

Apprenticeship and Training, Employment and Training Administration. All information required to submit a proposal is provided in the March 17, 1995, **Federal Register** (Vol. 60, No. 52), as amended. Applications for Diversity in Apprenticeship are due in the U.S. Department of Labor, Employment and Training Administration, by COB May 1, 1995. For further information on SGA/DAA 95–004, contact Charlotte Adams, Division of Acquisition and Assistance, Telephone (202) 219–8702 (this is not a toll-free number).

Definitions. *Nontraditional Occupations* are those where women account for less than 25 percent of the persons employed in a single occupational group. Generally speaking, *Apprenticeship* includes a formal paid training-work agreement where labor and management work together to promote learning on the job; to support the ''hands on'' learning, there must be related theoretical instruction (often classroom). After completing the program standards successfully—usually 3 to 5 years—the apprentice is awarded a certificate of completion by either the Bureau of Apprenticeship and Training or the State Apprenticeship Committee Agency.

*A. Authorities*

The technical assistance grants were first authorized under the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act, Public Law 102–530, approved October 27, 1992. Under an ''Intra-Agency Agreement,'' the Bureau of Apprenticeship, ETA transferred to the Women's Bureau $744,000 to fund the second year of WANTO under Part IV–D of the Job Training Partnership Act which authorizes the use of funds for pilot demonstration projects and are administered by ETA. The WB has responsibility for implementing the Solicitation for Grant Applications (SGA) process for the Technical Assistance (TA) grants to Community-Based Organizations (CBOs).

*B. Purpose of the Demonstration*

The purpose of the WANTO Act is to competitively award TA grants to CBOs with documented experience in the areas of recruiting, selection, training, placing, retaining, and promotion of women in apprenticeship and nontraditional occupations. CBOs will provide TA to employers, labor unions and other nonunion labor organizations who have requested TA from the Department of Labor to promote the employment of women in apprenticeship and nontraditional occupations (NTOs) in their workplaces. By providing TA to job creators—employers, unions and other nonunion labor organizations—the Department of Labor (DOL) anticipates increased employment and expanded job opportunities, with good pay and benefits, for women in apprenticeship and nontraditional occupations. Such WANTO activities promote the goal of the Department to build and enhance a skilled work force in a high performance workplace of new and better jobs.

**Part II. Application Process**

*A. Eligible Applicants*

1. Community-Based Organizations (CBOs) are eligible applicants to receive technical assistance grants. The term ''community-based organization'' as defined in section 4(5) of the Job Training Partnership Act (29 U.S.C 1501(5)), means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services. For this solicitation the significant segment of communities are the private nonprofit organizations which are representative of organizations that have demonstrated experience administering programs that recruit, select, train, place, and retain women for apprenticeship training and other nontraditional occupations (NTOs).

2. Employers, Labor Unions, and Other Nonunion Labor Organizations are eligible to receive technical assistance provided by community-based organizations receiving WANTO grants. To be selected to receive technical assistance, employers, and others must submit a technical assistance request either directly (1) to the Department of Labor, Office of Procurement Services or (2) to the CBO you have agreed to partner in preparing the response to SGA 95–02. The CBO must then take full responsibility for a timely and complete application. Also see G. Technical Assistance Requests, below.

*B. Contents*

To be considered responsive to the Solicitation for Grant Applications (SGA), each application must consist of and follow the order of the sections listed in Part III of this solicitation. The applicant must also include information which the applicant believes will address the selection criteria identified in Part IV. Technical proposals shall not exceed 20 single sided, double spaced, 10 to 12 pitch typed pages (not including attachments). Any proposals that do not conform to these standards shall be deemed non-responsive to this SGA and will not be evaluated.

1. Technical Proposal

Each proposal shall include (a) a two (2) page abstract which summarizes the proposal and (b) a full description of the CBO's program for technical assistance, including information required in Part III and IV. No cost data or reference to price shall be included in the technical proposal.

2. Cost Proposal

The cost (business) proposal must be separate from the technical proposal. The transmittal letter and the grant assurance and certification form shall be attached to the business proposal, which shall consist of the following:

a. Standard Form 424 ''Application for Federal Assistance,'' (Appendix C) signed by an official from the applicant organization who is authorized to enter the organization into a grant agreement with the Department of Labor. The Catalog of Federal Domestic Assistance Number (CFDA) is 17.700;

b. Standard Budget Form 424A ''Budget Information Form,'' (Appendix D); and

c. Budget Narrative: Provide a narrative explanation of the budget which describes all proposed costs and indicates how they are related to the operation of the project. Provide this information separately for the amount of requested Federal funding and the amount of proposed Non-Federal contribution. In those applications which propose to fund staff positions, the budget narrative must provide information which describes the number of proposed positions by title and by the amount of staff time and salary charged to Federal and Non-Federal funding resources. The Budget Narrative provides the detailed description of the costs reflected on the SF 424A.

*C. Funding Levels*

The Department has set aside up to $744,000 to be disbursed through WANTO grants. The Women's Bureau expects to make three (3) or four (4) awards to Community-Based Organizations (CBOs).

The Bureau expects awards to range from approximately $150,000 to $250,000, depending upon Department agreement on technical assistance services provisions, with no award in excess of $250,000.

*D. Length of Grant and Grant Awards*

The initial performance period for the grants awarded under this SGA shall be for eighteen (18) months of program

performance, with the option to extend for up to three months as a no cost extension to complete final reports. Each applicant shall reflect in their application the intention to begin operation no later than September 1995.

*E. Submission*

One (1) ink-signed original, complete grant application (plus five (5) copies of the Technical Proposal and two (2) copies of the Cost Proposal must be submitted to the U.S. Department of Labor, Office of Procurement Services, Room S–5220, 200 Constitution Avenue, N.W., Washington, D.C. 20210, not later than 4:45 pm EST, June 26, 1995. Hand delivered applications must be received by the Office of Procurement Services by that time.

Any application received at the Office of Procurement Services after 4:45 pm EST will not be considered unless it is received before award is made and:

1. It was sent by registered or certified mail not later than June 21, 1995.

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the above address; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm June 22, 1995.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the wrapper or envelope.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants shall request that the postal clerk place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Office of Procurement Services on the application wrapper or other documentary evidence of receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will not be accepted.

## Part III. Statement of Work—Key Features

### A. Introduction

The Women's Bureau (Washington, D.C.) announces the Solicitation for Grant Applications (SGA) for competitive grant awards first funded under the technical assistance program authorized by the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act and is now funded under the JTPA Title IV–D, demonstration program administered by the Employment and Training Administration. With grant funding of $744,000 for Fiscal Year 1995, the Department expects to make three (3) or four (4) awards to CBOs that will provide direct technical assistance to change the workplaces of job creators—employers, labor unions and other nonunion labor organizations—to make them more supportive to the needs of women in apprenticeship and nontraditional occupations (NTO).

1. CBOs may solicit employers, labor unions and other nonunion labor organizations' representatives who request technical assistance in preparing their workplace to promote women in apprenticeship and nontraditional occupations (NTOs).

2. At the same time, the Department will continue to build an inventory of workplace requests from employers, labor unions and nonunion labor organizations sent directly to the Office of Procurement Services, Room S–5220, Reference SGA 95–02, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Lisa Harvey.

3. Technical assistance requests from both CBOs and employers, labor unions and nonunion organizations should be in writing. A technical assistance request should include information on the demographics and needs of the firm. A sample of the information required is attached to this SGA. The attached form can be duplicated in any legible manner.

4. The Department will award only one grant per CBO—with or without multiple service providers or sub-contractors. The total amount of each grant will depend upon the total amount of direct technical assistance to be provided. Applicants should provide estimated cost (hourly or fixed rates) for specific technical assistance services they are prepared to perform in the cost proposal.

5. Since the thrust of this SGA is technical assistance to employers, etc. to attain workplace change, this is an employer-driven program. Allowable grant expenditures do not include CBO capacity building services, unless they are directly related to the provision of technical assistance to improve job creators' workplaces—employers, labor unions and nonunion labor organizations.

*B. Program Requirements*

The Department, through this competition, is seeking Community-Based Organization grantees with a record of accomplishment, with overall organizational experience and facilities, and with staff who can demonstrate the necessary technical knowledge that can ensure successful completion of provision of technical assistance to employers, union and nonunion labor organizations, including research and evaluation methodology in support of promoting women in apprenticeship and nontraditional occupations in job creators' workplaces. Grant applicants will have to demonstrate that they fulfill these criteria, and that they have reasonable prospects for establishing cooperative working arrangements with employers, union and nonunion labor organizations.

In the grant application process, Community-Based Organization grant applicants are not required to provide specific program design for providing technical assistance. They are required to present evidence of their experience, qualifications, technical knowledge of programs to assist job creators to recruit, select, train, place and retain women in apprenticeship and nontraditional occupations.

1. Provide Technical Assistance

Community-Based Organization (CBO) Eligibility: Definition. The term ''community-based organization'' as defined in section 4(5) of the Job Training Partnership Act (29 U.S.C. 1501(5)), means private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services.

a. For this solicitation the significant segment of communities are organizations that have demonstrated experience administering programs that

train and place women for apprenticeable occupations or other nontraditional occupations, including CBOs that have also had policy and publication experience in the area.

b. Community-Based Organizations, for this competition, do not include for profit or public entities such as, the Job Training Partnership System, hospitals, educational institutions—schools, colleges and universities.

2. Community-Based Organizations: Scope of Work. The Women's Bureau is seeking Community-Based Organizations with a record of accomplishment in the areas related to increasing the employment of women in apprenticeship and nontraditional occupations.

a. CBOs will provide Technical Assistance (TA) to employers, labor unions, and nonunion labor organizations to assist them in preparing their workplaces to support and promote women in apprenticeship training and nontraditional occupations.

b. TA will include a variety of activities to recruit, train, select, retain, and promote women in apprenticeable occupations and other nontraditional occupations to promote workplace change for women, increasing self-sufficiency for them and their families.

c. In addition to performing TA, CBOs will be required to conduct workplace feasibility study/examination to produce a ''plan of action'' and to describe/analyze project activity in a manual or ''how-to'' at a professional level.

*3. Scope of CBO Technical Assistance Activities—Key Features*

CBOs' technical assistance tasks include, but are not limited to, the following activities:

a. With TA request, develop outreach and orientation sessions and services to recruit women into the employers' apprenticeable occupations and nontraditional occupations;

b. With TA request, develop preapprenticeable occupations or nontraditional skills training to prepare women for apprenticeable occupations or nontraditional occupations curriculum or employer supported training;

c. With TA request, provide ongoing orientations for employers, unions, and workers on creating a successful environment for women in apprenticeable occupations or nontraditional occupations;

d. With TA request, establish support groups to facilitate nontraditional occupation Networks for women on or off the job site to improve job retention;

e. With TA request, establish a local computerized data base referral network to maintain a current list of tradeswomen who are available for work and employers and local labor unions who have available job openings or apprenticeship opportunities;

f. With TA request, develop intervention strategies to address workplace issues related to gender;

g. With TA request, provide liaison structure between tradeswomen and employers and tradeswomen and labor unions to address workplace issues related to gender;

h. With TA request, conduct exit interviews with tradeswomen to evaluate their on-the-job experience and to assess the effectiveness of the program; and

i. With TA request, develop front-end feasibility (''plan of action'') and assessment tools to evaluate the effectiveness of the program to be used by the customers; i.e., employers, labor unions and other organizations.

4. Capabilities and Qualifications of CBO and Staff Applicant CBOs are asked to provide information on organizational capacity, and experience; and the qualifications of the principal investigator(s) and staff who will provide both the ''hands on'' services and related technical written products that describe the project activities in a professional manner in the management and staff loading plans. In addition, applicant CBOs shall provide responses to items a–e and their subparts listed below:

a. Briefly describe and provide resumes documenting the qualifications of your organization's principal investigator (or technical assistance provider) and related staff (human resources) who will provide technical assistance (also include staff responsible for supporting research, analysis and writing manual and/or ''how-to'' publication(s)).

Provide complete resumes in staff loading section that describes the qualifications of persons to provide technical assistance in the area of women in apprenticeship and nontraditional occupations; include both education and work experience.

Provide work references, to support principal investigator and support staff qualifications to provide technical assistance in the area of women in apprenticeship and nontraditional occupations.

Briefly describe physical resource facilities that support your organization's human resources delivery of the technical assistance—book and video library, conference rooms, computer hardware and software, etc.

b. Briefly describe your organization's demonstrated experience in preparing women to gain employment in apprenticeable occupations or other nontraditional occupations;

Briefly describe your organization's current services.

Describe your organization's hourly or fixed costs for a range of technical assistance services provided by your organization.

Describe your organization's current funding levels and sources of funds.

Describe your organization's experience and success in the provision of services to women in preparing them for gainful employment in apprenticeable and other nontraditional occupations.

Describe what your organization would consider as its most outstanding success over the last two years?

Provide customer references that specifically support your organization's experience and qualifications to provide technical assistance in the area of women in apprenticeship and nontraditional occupations.

c. Briefly describe your organization's experience in delivering technical assistance.

Briefly describe the geographic location of your organization's technical assistance services and any experience in policy and/or written technical publications, including ''how-to.''

Include (in the appendix) copies of publications, such as, policy papers/studies, manuals or ''how-tos'' and feasibility studies related to women in apprenticeship and nontraditional occupations that your organization has developed.

Briefly describe target groups of women your organization has provided recruitment, training, placement, retention and promotion services; for what types of occupations and industries.

Briefly describe your organization's relationship with the Bureau of Apprenticeship and Training or the State Apprenticeship Committee.

d. Demonstrate experience working with the business community to prepare business to place women in apprenticeable occupations or other nontraditional occupations;

Briefly describe your organization's relationship and experience with employers and labor unions who offer apprenticeable and nontraditional occupations.

Briefly describe the type(s) of technical assistance to employers you have provided previously by your organization. What were the results of these services.

Provide business references to support your work with the business community to prepare business to place women in apprenticeship and nontraditional occupations.

Briefly list the employer and labor unions for which your organization has provided technical assistance.

e. List the tradeswomen or women in nontraditional occupations as active members of the organization, as either employed staff or board members.

List name, trade, and organizational position of tradeswomen and other women in nontraditional occupations on staff or on your organization's Board of Directors.

Include the dates when tradeswomen served as active paid or unpaid positions in your organization.

In addition all applications must also include a management and staff loading plan. The management plan is to include a project organization chart and accompanying narrative which differentiates between elements of the Applicant's staff and subcontractors or consultants who will be retained.

The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimates for each task must be broken down by individuals assigned to the task, including subcontractors and consultants. All key tasks must be charted to show time required to perform them by months or weeks.

5. Use of Funds

The Technical Proposal of CBO applicants shall describe both known and anticipated expenditures that may arise in the conduct of providing technical assistance to and on employers, union and nonunion labor organization relevant to workplace change for women in apprenticeship and nontraditional occupations. The Department is also interested in hearing about any leverage activities anticipated with WANTO funds.

a. List activities on which grant funds will be expended.

b. List any leverage of funds activities taken or anticipated with this grant—any partnerships, linkages or coordination of activities, combining of streams of funding, etc.

c. List activities on which grants funds will be expended by subgrantees (if applicable).

6. Continuation of Activities

The Technical Proposal of CBO applicants shall describe any anticipated strategies proposed by them to encourage and promote the continuation or expansion of grant activities beyond the grant's period of program performance.

a. Briefly describe your organization's approach to employers or unions/nonunion organizations to continue support for women in the workplace after they are recruited, trained and placed in apprenticeship and other nontraditional occupations and after the completion of this project.

b. Briefly describe how your organization will approach employers or unions/nonunion organizations to incorporate technical assistance into ongoing recruiting, training and promotion of women in apprenticeships and other nontraditional occupations after the completion of this project.

*G. Technical Assistance Requests*

1. The Department is seeking employers, labor unions and other nonunion organizations who want to receive technical assistance from the community-based organizations with grants to provide such assistance. Requesting employers and union and nonunion labor organizations should submit technical assistance requests to the Department of Labor, Attention: Lisa Harvey, Office of Procurement Services, Room S–5220, Reference SGA 95–02, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

2. A sample copy of a request for information is attached to this SGA, although no special form is required as long as the information indicated is provided. The information requested for technical assistance includes inquiries 1–8, listed below as (a)-(h), along with your name, title, organization, address, phone, FAX, employer or labor (union/nonunion) affiliation, firm/organizations' industry and product:

a. Briefly describe your (firm/organization's experience in recruiting, training and retraining women for apprenticeship and other nontraditional occupations.

b. Briefly describe your (firm/organization's) current or anticipated need(s) for technical assistance (i.e., problem recruiting, training, and/or retraining women in apprenticeship and other nontraditional jobs.

c. Provide a description of the types of apprenticeship or nontraditional occupations your firm or organization want to train and place women, including women already in your workplace and working at other jobs, including pay and benefits.

d. How many jobs, also new employment opportunities, will be created in your workplace, and for what occupations or apprenticeships, over the next two to five years?

e. Briefly discuss the type of women your firm or organizations wishes to target or attract.

f. Assurance that there are or will be suitable and appropriate positions available—in your workplace or outside economy—in apprenticeable occupations programs or nontraditional occupations targeted.

g. Commitment that reasonable effort will be made to place qualified women in apprenticeship and nontraditional occupations.

h. Briefly describe your plans for the development and maintenance of a relationship with the State level of the Bureau of Apprenticeship and Training.

3. Applicants who prefer to submit the completed technical assistance forms with their grant proposal shall include them within a separate section entitled ''Section G.'' This section shall be attached to the end of the Technical Proposal.

## Part IV. Evaluation Criteria and Selection

Applicants are advised that selection for grant award is to be made after careful evaluation of technical applications by a panel. Each panelist will evaluate applications against the various criteria on the basis of 100 points. The scores will then serve as the primary basis to select applications for potential award. Clarification may be requested of grant applicants if the situation so warrants. Please see Part III., Section B. for additional information on the elements against which proposal will be reviewed.

| | Points |
|---|---|
| 1. Technical Criteria: | |
| a. Capabilities and Qualifications of CBO and Staff | 60 |
| b. Use of Funds ..... | 20 |
| c. Continuation of Activities | 20 |
| 2. Cost Criteria: | |
| Proposals will be scored, based on their costs in relation to other proposals submitted in response to this SGA. | |
| 3. Total Score: | |
| Technical quality of proposals will be weighted three (3) times the estimated price in ranking proposals, for purposes of selections for award. | |

Proposals received will be evaluated by a review panel based on the criteria immediately following. The panel's recommendations will be advisory, and final awards will be made based on the best interests of the Government, including but not limited to such factors as technical quality, geographic balance.

The Department wishes to make it clear that it is not simply the best-

written proposals that will be chosen, but rather those which demonstrate the greatest experience and commitment to assisting business to successfully recruit, train, and retain women in apprenticeable occupations and nontraditional occupations and to expand the employment and self-sufficiency options of women.

During the technical panel evaluation of all proposals and requests, the Department will bring together CBO qualifications and capabilities with employers/labor unions and other nonunion labor organizations requests to develop final grant activities. In addition, the Department will also consider geographic coverage and occupational/industrial impact in the final TA grant awards, as well as broadening coverage of different CBO service providers.

**Part V**

*A. Deliverables*

(This section is provided only so that grantees may more accurately estimate the staffing budgetary requirements when preparing their proposal. Applicants are to exclude from their cost proposal the cost of any requested travel to Washington, D.C.)

1. No later than four (4) weeks after award, the grantee shall meet with the Women's Bureau and the Bureau of Apprenticeship and Training to discuss technical assistance activities, timelines, and technical assistance outcomes assessment for comment and final approval. At that time the grantee final technical assistance requests and CBOs will be matched. The CBO and the Department will discuss and make decisions on the following program activities:

a. The number of employers and union/nonunion labor unions to be served.

b. The methodology to be used to change management and employee attitudes about women in non-traditional occupations.

c. The types of systemic change anticipated by technical assistance strategies anticipated to be incorporated into employer on-going recruitment, hiring, training and promotion of women in apprenticeship and apprenticeable nontraditional occupations.

d. The occupational, industrial and geographical impact anticipated.

e. The supportive services to be provided to employers and women after successful placement into apprenticeship or apprenticeable nontraditional occupations.

f. The plan for the development and maintenance of a relationship with the State level of the Federal Bureau of Apprenticeship and Training.

The Women's Bureau and the Bureau of Apprenticeship and Training will provide input orally and in writing, if necessary, within ten (10) working days after the meeting.

3. No later than twelve (12) weeks after award, the grantee shall begin the program of technical assistance to employers and labor unions to recruit, promote and retain women in apprenticeable occupations and other nontraditional training for women, characterized by employment growth and above average earnings.

4. No later than sixteen (16) weeks after award, the first quarterly progress report of work done under this grant will be due. Thereafter, quarterly reports will be due ten (10) working days after the end of each of the three remaining quarters.

Quarterly progress reports should include:

a. A description of overall progress on work performed during the reporting period, including (1) number and profiles of employers, union and nonunion labor organizations provided technical assistance during the period; (2) systemic workplace and policy changes—actual or in process; (3) public presentations; (4) media articles or appearances; (5) publications disseminated and (6) publications developed.

b. An indication of any current problems which may impede performance and the proposed corrective action.

c. A discussion of work to be performed during the next reporting period.

Between scheduled reporting dates the grantee shall also immediately inform the Grant Officer's Technical Representative of significant developments affecting the grantee's ability to accomplish the work.

5. No later than fifty-two (52) weeks after award, the grantee shall submit, one (1) camera ready copy and one (1) diskette (IBM compatible; WordPerfect 5.1), an integrated draft report of the process and results of the technical assistance activities during the year. The Women's Bureau and the Bureau of Apprenticeship and Training will provide written comments on the draft report within twenty (20) working days if substantive problems are identified. The grantee's response to these comments shall be incorporated into the final report.

6. No later than sixty-four (64) weeks after award, the grantee shall submit one (1) camera ready copy and one (1) diskette (IBM compatible, WordPerfect 5.1) of the final report. The report shall cover findings, final performance data, outcome results and assessment, and employer or labor union plans for follow-up of participants. Copies of technical assistance curricula shall be included, as well as any plans for replication and dissemination of information. An Executive Summary of the findings and recommendations, if any, shall either be included in the report or accompany the report.

Signed at Washington, D.C. on May 3, 1995.

**Lawrence J. Kuss,**

*Grants Officer.*

## Appendices

## Appendix A—Application for Technical Assistance

**Women in Apprenticeship and Nontraditional Occupations (WA–NTO)**

WOMEN'S BUREAU

BUREAU OF APPRENTICESHIP AND TRAINING

The U.S. Department of Labor is *seeking employers and labor unions* who want and would benefit from receiving Technical Assistance (TA) in their outreach and recruitment training and retention of women in apprenticeship and apprenticeable nontraditional occupations. The object of the technical assistance is both to promote the self-sufficiency of women and to promote a skilled and stable workforce for employers and labor unions.

TA will be provided by community-based organizations (CBOs) with experience and DOL grants to provide such TA. The U.S. Department will match employer or labor unions with CBOs or CBOs can submit employers and/or labor unions with their response to the SGA. All Technical Assistance Requests should be received at the address below by September 8, 1995.

Please complete this application and mail it to: Office of Procurement Services, Room S–5220, Reference SGA—95–02, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Lisa Harvey.

1. Name and Title of Applicant:

_____

2. Name of Organization:

_____

3. Industry and Product:

_____

4. Check Affiliation:
Employer:

_____

Labor Union & related:

_____

5. Address:

_____

6. Telephone:

_____

7. Fax:

_____

8. Briefly describe your (firm/organization's experience in recruiting,

training and retraining women for apprenticeship and other nontraditional occupations.

9. Briefly describe your (firm/organization's) current or anticipated need(s) for technical assistance (i.e., problem recruiting, training, and/or retraining women in apprenticeship and other nontraditional jobs.

10. Provide a description of the types of apprenticeship or nontraditional occupations your firm or organization want to train and place women, including women already in your workplace and working at other jobs, including pay and benefits.

11. How many jobs, also new employment opportunities, will be created in your workplace, and for what occupations or apprenticeships, over the next two to five years?

12. Briefly discuss the type of women your firm or organizations wishes to target or attract.

13. Assurance that there are or will be suitable and appropriate positions available—in your workplace or outside economy—in apprenticeable occupations programs or nontraditional occupations targeted.

14. Commitment that reasonable effort will be made to place qualified women in apprenticeship and nontraditional occupations.

15. Briefly describe your plans for the development and maintenance of a relationship with the State level of the Bureau of Apprenticeship and Training.

_____

Signature

_____

Date

## Appendix B—Assurances and Certifications Signature Page

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the *ASSURANCES AND CERTIFICATIONS* contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. *Assurances—Non-Construction Programs*

B. *Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Transaction*

C. *Certifications Regarding Lobbying: Debarment, Suspension, Drug-Free Workplace*

D. *Certification of Release of Information*

E. *Nondiscrimination and Equal Opportunity Requirements of JTPA*

Applicant Name:

_____

Date: _____

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

_____

Signature of Authorized Certifying Official

_____

Applicant Organization

_____

Title

_____

Date Submitted

*Please Note:* This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.

BILLING CODE 4510–23–P

APPENDIX C

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code) |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐.☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

| 15. ESTIMATED FUNDING: | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4510–23–C

**Instructions for the SF 424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4510–23–P

APPENDIX D

## BUDGET INFORMATION - Non Construction Programs

| Catalog of Federal Domestic Assistance | Estimated Unobligated Funds | | New or Revised Budget | |
|---|---|---|---|---|
| CFDA NUMBER | FEDERAL | NON-FEDERAL | FEDERAL | NON-FEDERAL |
| 1._____ | $_____ | $_____ | $_____ | $_____ |
| 2._____ | $_____ | $_____ | $_____ | $_____ |

| COST CATEGORY | FEDERAL FUNDING | | | NON-FEDERAL CONTRIBUTION | | |
|---|---|---|---|---|---|---|
| DIRECT COST | CURRENT FEDERAL BUDGET | REVISIONS AND/OR EXTENSIONS | REVISED FEDERAL BUDGET | CURRENT AWARDEE BUDGET | REVISIONS AND/OR EXTENSIONS | REVISED AWARDEE BUDGET |
| (A) PERSONNEL | | | | | | |
| (B) FRINGE BENEFITS | | | | | | |
| (C) TRAVEL & PER DIEM | | | | | | |
| (D) EQUIPMENT ** | | | | | | |
| (E) SUPPLIES | | | | | | |
| (F) CONTRACTUAL | | | | | | |
| (G) OTHER | | | | | | |
| TOTAL DIRECT COST | | | | | | |
| INDIRECT COST | | | | | | |
| TOTAL ESTIMATED COST | | | | | | |

**SEE PART IV - SPECIAL CONDITION #9

AUTHORIZED FOR LOCAL REPRODUCTION

SF424-A

[FR Doc. 95–11464 Filed 5–9–95; 8:45 am]

BILLING CODE 4510–23–C

# Reader Aids

**Federal Register**

Vol. 60, No. 90

Wednesday, May 10, 1995

## INFORMATION AND ASSISTANCE

**Federal Register**

| | |
|---|---|
| Index, finding aids & general information | **202–523–5227** |
| Public inspection announcement line | **523–5215** |
| Corrections to published documents | **523–5237** |
| Document drafting information | **523–3187** |
| Machine readable documents | **523–4534** |

**Code of Federal Regulations**

| | |
|---|---|
| Index, finding aids & general information | **523–5227** |
| Printing schedules | **523–3419** |

**Laws**

| | |
|---|---|
| Public Laws Update Service (numbers, dates, etc.) | **523–6641** |
| Additional information | **523–5230** |

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | **523–5230** |
| Public Papers of the Presidents | **523–5230** |
| Weekly Compilation of Presidential Documents | **523–5230** |

**The United States Government Manual**

| | |
|---|---|
| General information | **523–5230** |

**Other Services**

| | |
|---|---|
| Data base and machine readable specifications | **523–4534** |
| Guide to Record Retention Requirements | **523–3187** |
| Legal staff | **523–4534** |
| Privacy Act Compilation | **523–3187** |
| Public Laws Update Service (PLUS) | **523–6641** |
| TDD for the hearing impaired | **523–5229** |

### ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

### FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.
**NOTE:** YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

## FEDERAL REGISTER PAGES AND DATES, MAY

21033–21424.....1
21425–21698.....2
21699–21972.....3
21973–22246.....4
22247–22454.....5
22455–24534.....8
24535–24760.....9
24761–25118.....10

## CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
6792.....21423
6793.....21696
6794.....21971
6795.....22247
6796.....22453

**Administrative Orders:**
Presidential Determinations:
No. 95–18 of April 21, 1995.....22447
No. 95–19 of April 21, 1995.....22449
No. 95–20 of May 1, 1995.....22245

**Executive Orders:**
12959.....24757
12613 (Revoked in part by E.O. 12959).....24757
12957 (Revoked in part by E.O. 12959).....24757

**5 CFR**

Ch. XXI.....22249
185.....22249
532.....22455
630.....22455
890.....21590
1603.....24535

**Proposed Rules:**
870.....21759
871.....21759
872.....21759
873.....21759
874.....21759

**7 CFR**

6.....21425
28.....21033
75.....21034
354.....24535
400.....21035
704.....22456
723.....22458
911.....24537
915.....24537
958.....24539
1036.....22255
1410.....22456
1464.....21036, 22458
1468.....22460
1494.....21037
1924.....24540

**Proposed Rules:**
1007.....25014
1205.....21999

**8 CFR**

103.....21979
208.....21973
210.....21973
214.....21979
240.....21973
242.....21973
245a.....21039, 21973
247a.....21973

**Proposed Rules:**
1.....24573
13.....24573
103.....24573
208.....24573
242.....24573

**9 CFR**

78.....24547
94.....21428
113.....24547

**Proposed Rules:**
92.....24580
112.....24584
113.....24584
308.....22311
310.....22311
318.....22311
320.....22311
325.....22311
326.....22311
327.....22311
381.....22311

**10 CFR**

2.....22461, 24549
19.....24549
20.....24549
30.....24549
32.....24549
40.....24549
50.....24549
51.....22461, 24549
54.....22461
60.....24549
61.....24549
70.....24549
71.....24549
72.....24549
73.....24549
74.....24549
76.....24549
150.....24549

**Proposed Rules:**
50.....22010
73.....24803

**12 CFR**

25.....22156
203.....22156, 22223
228.....22156
265.....22256
308.....24761
345.....22156
563e.....22156

707 ..... 21699

**13 CFR**

123 ..... 22495
Proposed Rule:
122 ..... 22311

**14 CFR**

39 ..... 21041, 21429, 21976, 21977, 21979, 22496, 22498, 22499, 22501, 24553, 24762
71 ..... 21433, 21434, 21700, 24555, 24556
121 ..... 24765
1245 ..... 21042
**Proposed Rules:**
39 ..... 21053, 21054, 21056, 21470, 21471, 21772, 21774, 22011, 22013, 24587, 24589
71 ..... 21473, 21776, 24592, 24593, 24594, 24595

**16 CFR**

**Proposed Rules:**
444 ..... 24805

**17 CFR**

211 ..... 24968

**18 CFR**

2 ..... 22257, 22503
34 ..... 22503
35 ..... 22257, 22503
41 ..... 22503
131 ..... 22503
292 ..... 22503
294 ..... 22503
382 ..... 22503
385 ..... 22503

**19 CFR**

7 ..... 21043
11 ..... 21043
12 ..... 21043
18 ..... 21043
19 ..... 21043
24 ..... 21043
54 ..... 21043
101 ..... 21043
102 ..... 21043
111 ..... 21043
114 ..... 21043
123 ..... 21043
128 ..... 21043
132 ..... 21043
134 ..... 21043
141 ..... 21043
145 ..... 21043
146 ..... 21043
148 ..... 21043
151 ..... 21043
152 ..... 21043
177 ..... 21043
181 ..... 21043
191 ..... 21043
**Proposed Rules:**
10 ..... 22312
12 ..... 22312
102 ..... 22312
134 ..... 22312
177 ..... 22312
162 ..... 21778

**20 CFR**

217 ..... 21982
226 .....
232 ..... 22261
344 ..... 22261
**Proposed Rules:**
702 ..... 22537
703 ..... 22537

**21 CFR**

5 ..... 24766
172 ..... 21700
178 ..... 22269
**Proposed Rules:**
173 ..... 21474
310 ..... 21590
500 ..... 24808
582 ..... 24808
589 ..... 24808

**24 CFR**

200 ..... 21936
203 ..... 21936
3500 ..... 24734
**Proposed Rules:**
Ch. IX ..... 21058
950 ..... 24597
990 ..... 24597

**26 CFR**

1 ..... 21435
**Proposed Rules:**
1 ..... 21475, 21482, 21779
301 ..... 24811, 24813

**29 CFR**

100 ..... 22269
**Proposed Rules:**
1926 ..... 22539
2200 ..... 21058

**30 CFR**

944 ..... 21435
**Proposed Rules:**
931 ..... 22332
934 ..... 21484

**32 CFR**

706 ..... 22505, 22507, 22508, 22509, 22510, 22511

**33 CFR**

100 ..... 21982, 24557
110 ..... 21983
164 ..... 24767
165 ..... 24557, 24558
**Proposed Rules:**
84 ..... 24598
117 ..... 22014, 24599
322 ..... 21061

**34 CFR**

690 ..... 21438
**Proposed Rules:**
200 ..... 21400
201 ..... 21400
203 ..... 21400
205 ..... 21400
212 ..... 21400

**36 CFR**

**Proposed Rules:**
242 ..... 24601

**37 CFR**

1 ..... 21043, 21438
202 ..... 21983
10 ..... 21438

**38 CFR**

**Proposed Rules:**
3 ..... 22016
21 ..... 21486

**39 CFR**

111 ..... 22270
**Proposed Rules:**
3001 ..... 22017

**40 CFR**

52 ..... 21440, 21442, 21445, 21447, 21451, 21453, 21455, 21456, 21702, 21703, 21706, 21707, 21713, 21717, 22240, 22241, 22274, 22277, 22283, 22284, 22285, 22287, 22289, 22512, 22515, 22518
70 ..... 21720
80 ..... 21724
81 ..... 21456, 22289
82 ..... 21682, 24676, 24970
131 ..... 22228, 22229
180 ..... 24782, 24784, 24785, 24788
271 ..... 22524, 24790
**Proposed Rules:**
52 ..... 21487, 21488, 21489, 21490, 21780, 21781, 21783, 22334, 22335, 22336, 22337, 22540, 22541, 24813
81 ..... 21490, 22336, 22337
82 ..... 21490, 25010
156 ..... 21965
170 ..... 21944, 21948, 21953, 21955, 21960
180 ..... 21725, 21728, 21731, 21733, 21734, 21736, 21784
185 ..... 21736, 21786, 24815
186 ..... 24815
300 ..... 21491, 21786
439 ..... 21592

**41 CFR**

201–23 ..... 22019
201–24 ..... 22019

**42 CFR**

2 ..... 22296
6 ..... 22530
406 ..... 22533
421 ..... 21048

**43 CFR**

**Public Land Orders:**
7138 ..... 21984
7139 ..... 22535
7140 ..... 24560
7141 ..... 24792
**Proposed Rules:**
11 ..... 24604

**44 CFR**

64 ..... 21739

**45 CFR**

96 ..... 21332

**46 CFR**

15 ..... 24763
50 ..... 24767
52 ..... 24767
56 ..... 24767
58 ..... 24767
61 ..... 24767
111 ..... 24767
381 ..... 24560
**Proposed Rules:**
25 ..... 24748
28 ..... 24748
30 ..... 24748
31 ..... 24748
35 ..... 24748
37 ..... 24748
40 ..... 24748
54 ..... 24748
55 ..... 24748
56 ..... 24748
61 ..... 24748
70 ..... 24748
71 ..... 24748
72 ..... 24748
76 ..... 24748
78 ..... 24748
79 ..... 24748
90 ..... 24748
91 ..... 24748
95 ..... 24748
97 ..... 24748
99 ..... 24748
106 ..... 24748
150 ..... 24748
154 ..... 24748
174 ..... 24748
188 ..... 24748
189 ..... 24748

**47 CFR**

2 ..... 21048
15 ..... 21984
73 ..... 22298, 22535, 22536
76 ..... 21464
90 ..... 21984, 21987
**Proposed Rules:**
25 ..... 24817
73 ..... 22021, 22022, 22541, 24606
90 ..... 22023

**48 CFR**

502 ..... 21467
506 ..... 21467
513 ..... 21467
552 ..... 21467
926 ..... 22298
952 ..... 22298
970 ..... 22298
1503 ..... 21993
1505 ..... 21993
1513 ..... 21993
1514 ..... 21993
1515 ..... 21993
1522 ..... 21993
1525 ..... 21993
1542 ..... 21993
1552 ..... 21993
1852 ..... 22095
5452 ..... 21992
**Proposed Rules:**
45 ..... 22442
52 ..... 22442
219 ..... 22035

**49 CFR**

219.....24765
382.....24765
571.....24562, 24797
654.....24765
1002.....22303
1011.....22303
1160.....22303
1161.....22303
1162.....22303
1163.....22303
**Proposed Rules:**
214.....22542
383.....24820
1121.....22035

**50 CFR**

217.....21741
227.....21741
649.....21994
651.....21994
661.....21746
663.....22303, 24572
672.....24800
675.....22306, 24800
676.....22307
678.....21468
**Proposed Rules:**
10.....24686
100.....24601
216.....22345
625.....21491
640.....21493
671.....22542
672.....22542
673.....24822
675.....22542
676.....22542