

# Federal Register

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Federal Register

# Presidential Documents

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Monday, June 5, 1995

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**Title 3—**

**Presidential Determination No. 95-22 of May 19, 1995**

**The President**

**Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of the Republic of Romania**

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me by subsections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a)) ("the Act"), I determine that the Republic of Romania is not in violation of paragraph (1), (2) or (3) of subsection 402(a) of the Act or paragraph (1), (2) or (3) of subsection 409(a) of the Act.

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



THE WHITE HOUSE,  
*Washington, May 19, 1995.*

[FR Doc. 95-13839

Filed 6-1-95; 3:20 pm]

Billing code 4710-10-M

# Rules and Regulations

Federal Register

Vol. 60, No. 107

Monday, June 5, 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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1099

[Docket No. AO-183-A47; DA-92-11]

#### Milk in the Paducah, Kentucky, Marketing Area; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule amends the Paducah, Kentucky, Federal milk order based on final decisions issued by the Acting Assistant Secretary on December 2, 1994 (59 FR 64524) and on January 27, 1995 (60 FR 7290). The amendments to the order provide a new formula to price Class II milk and implement the base month Minnesota-Wisconsin (M-W) price updated with a butter/powder/cheese formula as the replacement for the M-W price series.

**EFFECTIVE DATE:** June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovics, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, Room 2968, South Building, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 720-6274.

**SUPPLEMENTARY INFORMATION:** This administrative rule 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 action will not have a significant economic impact on a substantial number of small entities. The amended order will promote more

orderly marketing of milk by producers and regulated handlers.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This 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) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with 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 his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Prior documents in this proceeding: Notice of Hearing (M-W price): Issued May 12, 1992; published May 15, 1992 (57 FR 20790).

Notice of Hearing (Class II price): Issued December 14, 1993; published December 21, 1993 (58 FR 67380).

Recommended Decision (M-W price): Issued August 3, 1994; published August 8, 1994 (59 FR 40418).

Recommended Decision (Class II price): Issued August 22, 1994; published August 26, 1994 (59 FR 44074).

Final Decision (Class II price): Issued December 2, 1994; published December 14, 1994 (59 FR 64524).

Final Rule (Class II price): Issued January 27, 1995; published February 2, 1995 (60 FR 6606).

Final Decision (M-W price): Issued January 27, 1995; published February 7, 1995 (60 FR 7290).

Proposed Termination of Order: Issued March 3, 1995; published March 9, 1995 (60 FR 12907).

Extension of Time for Filing Comments on Proposed Termination of Order: Issued March 27, 1995; published March 31, 1995 (60 FR 16589).

Final Rule (M-W price): Issued April 6, 1995; published April 14, 1995 (60 FR 18952).

Referendum Order: Issued May 8, 1995; published May 12, 1995 (60 FR 25628).

### Findings and Determinations

The proceeding on the proposed termination of the Paducah, Kentucky, milk marketing order, issued March 3, 1995 (60 FR 12907), is hereby terminated.

When producer approval of the order, as proposed to be amended, was not indicated in a referendum conducted in the Class II proceeding, comments were sought concerning possible termination of the order. The number of comments received from producers indicated that there was support for the order and provided a sufficient basis for conducting another referendum. Thus, another referendum was conducted to determine if producers approved of the order as amended by the Class II proceeding and by the M-W proceeding. The order, as proposed to be amended, was subsequently approved. Therefore, it is appropriate at this time to terminate the proposed termination proceeding issued March 3, 1995, and to proceed to amend the order as approved by producers.

The following findings and determinations hereinafter set forth supplement those that were made when the Paducah, Kentucky, order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid order:

(a) Findings upon the basis of the hearing records. 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 governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), public hearings were held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of

milk in all Federal milk order marketing areas.

Upon the basis of the evidence introduced at such hearings and the records thereof, it is found that:

(1) The Paducah, Kentucky, order 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 marketing area, and 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 order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the Paducah, Kentucky, order effective June 5, 1995. Any delay beyond that date would disrupt the orderly marketing of milk in the marketing area because there would be no pricing constituent available to use to establish minimum prices of milk.

The provisions of this order are known to handlers. The final decisions of the Acting Assistant Secretary containing proposed amendments to the order were issued on December 2, 1994, and January 27, 1995, and were published in the **Federal Register** on December 14, 1994 (59 FR 64524), and February 7, 1995 (60 FR 7290), respectively.

The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the Paducah, Kentucky, order effective June 5, 1995, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Section 8c(9) of the Act) of more than 50 percent of the milk which is marketed within the marketing area to

sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by producers of at least two-thirds of the milk produced for sale in the marketing area who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

#### List of Subjects in 7 CFR Part 1099

Milk marketing orders.

#### Order Relative to Handling

*It is therefore ordered*, that on and after June 5, 1995, the handling of milk in the Paducah, Kentucky, marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

#### PART 1099—MILK IN THE PADUCAH, KENTUCKY, MARKETING AREA

1. The authority citation for 7 CFR Part 1099 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Section 1099.20 is removed.

3. Section 1099.50 is amended by revising paragraph (b) to read as follows:

#### § 1099.50 Class prices.

\* \* \* \* \*

(b) *Class II price.* The Class II price shall be the basic formula price for the second preceding month plus \$0.30.

\* \* \* \* \*

4. Section 1099.51 is revised to read as follows:

#### § 1099.51 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 § 1099.74 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.

5. Section 1099.51a is removed.

6. Section 1099.53 is revised to read as follows:

**§ 1099.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III-A prices for the preceding month.

7. Section 1099.74 is revised to read as follows:

**§ 1099.74 Butterfat differential.**

For milk containing more or less than 3.5 percent butterfat, the uniform price 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 § 1099.51 (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.

Dated: May 31, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95-13688 Filed 6-2-95; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF JUSTICE**

**Executive Office for Immigration Review**

**8 CFR Part 3**

[EOIR No. 101F; AG Order No. 1970-95]

RIN 1125-AA05

**Citizenship Requirement for Employment**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule requires that employees hired by the Executive Office for Immigration Review (EOIR or Agency) be citizens of the United States of America. This rule exempts EOIR from the Immigration Reform and Control Act of 1986's general prohibition of discrimination based on citizenship status and supplements E.O. 11935, which requires United States citizenship for almost all Federal employees in the competitive service.

**EFFECTIVE DATE:** July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, Telephone: (703) 305-0470.

**SUPPLEMENTARY INFORMATION:** The Department of Justice published a proposed rule on October 27, 1994 (59 FR 53946) in order to exempt the Executive Office for Immigration Review (EOIR) from the general rule of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b(a)(1) (IRCA), by invoking IRCA's provision for regulatory exception to the general rule, 8 U.S.C. 1324b(a)(2)(C). The proposed rule is corollary to E.O. 11935, 41 FR 37301 (1976), which requires United States citizenship for almost all Federal employees in the competitive service. The Agency did not receive any timely comments. One comment was received well after the closing date.

The rule authorizes EOIR to require its employees and volunteers to be citizens of the United States of America. This rule will affect EOIR employees such as Immigration Judges, Board Members of the Board of Immigration Appeals and their legal staffs. The primary mission of these employees is to adjudicate or to facilitate the

adjudication of immigration-related cases. Such Agency employees and volunteers often have access to sensitive information and handle complex and sensitive immigration issues. Furthermore, the citizenship requirement is designed to bolster public confidence in the proper administration of the country's immigration laws. It is imperative that individuals who work at EOIR, either as employees or volunteers, demonstrate their allegiance to the United States by being able to document that they are United States citizens.

Pursuant to E.O. 11935, 41 FR 37301 (1976), the Executive Branch requires United States citizenship for employees hired in the competitive service. This rule extends the citizenship requirement to all EOIR employees and volunteers. The rule exempts EOIR from the prohibition of discrimination based on citizenship status, pursuant to the procedures established by IRCA. This Attorney General rule is consistent with E.O. 11935. The rule is an exercise of the Attorney General's authority to regulate the employment of sensitive, non-competitive service Department of Justice employees.

Additionally, this rule allows the Agency to exercise its discretion to hire non-citizens when necessary to accomplish the Agency's mission. For example, this rule would permit the Director of the Agency to authorize hiring an interpreter skilled in the English language and an unusual foreign language when a United States citizen interpreter is not available.

This rule draws on well-established Supreme Court jurisprudence upholding the reservation of certain rights, such as the right to govern, to citizens. *Foley v. Connelie*, 435 U.S. 291 (1978) (affirming a requirement that police officers be citizens based on the precept that "[t]he act of becoming a citizen is more than a ritual \* \* \* [The citizen] is entitled to participate in the process of democratic decisionmaking. *Id.* at 295"). See also *Ambach v. Norwick*, 441 U.S. 68 (1979) (affirming a citizenship requirement for public school teachers). The Supreme Court recognized that a citizenship employment requirement is sometimes necessary in *Bernal v. Fainter*, 467 U.S. 216 (1984), holding that, "[s]ome public positions are so closely bound up with the formulation and implementation of self-government that the State is permitted to exclude from those positions persons outside the political community, hence persons who have not become part of the process of democratic self-determination." *Id.*, at 221. The *Bernal* court relied on an

earlier Supreme Court case which held *inter alia*, "Aliens are by definition those outside this [political] community." *Cabell v. Chavez-Salido*, 454 U.S. 432, 440 (1982).

The untimely comment received by the Agency objects to the rule on three grounds. The comment states that: (1) The rule is unconstitutional because Article III of the United States Constitution does not require Article III judges to be citizens; (2) the rule contravenes case law; and (3) the rule lacks a rational basis.

After careful consideration of the comment, the Agency has decided not to follow the comment's suggestion that the rule be withdrawn or modified. The final rule retains the language of the proposed rule for the following reasons:

(1) The absence of a citizenship requirement for Article III judges cannot be understood as a constitutional prohibition against a citizenship requirement for Executive Branch immigration judges.

(2) These cases do not persuade the Agency that the rule needs modification. Three of the four cited cases pre-date IRCA but, even considered on the merits, these cases do not persuade the Agency that it needs to modify this rule. The three pre-IRCA cases cited are: *Bernal v. Fainter*, 467 U.S. 216 (1984) (strict scrutiny standards applies to state law distinction based on alienage except when laws exclude aliens from positions closely related to processes of democratic government); *Hampton v. Mow Sun Wong*, 426 U.S. 88 (1976) (rule imposing wholesale ban on aliens throughout the federal civil service was not justified by reasons within the authority of the Civil Service Commission to advance); and *In Re Griffiths*, 413 U.S. 717, 724 (1973) (Connecticut's prohibition on aliens sitting for the bar violates equal protection because the authority of attorneys does not "involve matters of state policy or acts of such unique responsibility as to entrust them only to citizens," nor does practice of law offer "meaningful opportunities adversely to affect the interest of the United States").

The comment's reliance on *Bernal* versus *Fainter* is misplaced. As discussed above, the *Bernal* decision expressly states that it is appropriate to exclude non-citizens from some government employment. 467 U.S. at 221.

The comment's analysis of *Hampton* versus *Mow Sun Wong* is not persuasive either. At issue in *Hampton* was a Civil Service Commission regulation requiring civil servants to be United States citizens. *Hampton* held that a

federal executive agency could discriminate on the basis of citizenship where there is a legitimate national interest for such discrimination. The *Hampton* court found that the rule at issue did not meet the legitimate national interest standard and therefore held the rule unconstitutional. In contrast to the Civil Service Commission's rule, the EOIR rule meets the *Hampton* standard. The national interest is served by ensuring that individuals who are involved in the adjudication of immigration-related cases are citizens. It is also noteworthy that subsequent to judicial invalidation of the Civil Service Commission rule requiring citizenship in *Hampton*, the identical requirement was put into place by Executive Order. E.O. 11935, 41 FR 37301 (1976). The restriction barring noncitizens from employment in the federal competitive civil service, as authorized by the Executive Order, is still in effect.

*In Re Griffiths* is inapposite to this rulemaking. *Griffiths* examined whether a state had the authority to ban non-citizens from the practice of law. In finding that such a ban violated the Equal Protection Clause of the Fourteenth Amendment, the Court found that the state had not met its burden of showing that the classification was necessary to promote or safeguard the state's interest in the qualifications of those admitted to the practice of law. 413 U.S. at 724-727. The practice of law, the Court found, does not involve matters of state policy or acts of such unique responsibility as to entrust them only to citizens. Furthermore, as stated in the decision, the practice of law does not offer meaningful opportunities adversely to affect the interest of the United States. *Id.* at 724. In contrast, EOIR employment frequently involves federal immigration matters which can impact national policy and affect the interest of the United States. Therefore, EOIR employment should be held exclusively by United States citizens.

The fourth case cited by the comment, *City of Orlando v. Florida*, 751 F. Supp. 974 (M.D. Fla. 1990), is also factually inapposite to this rulemaking. *Orlando* struck down that part of the state's loyalty oath requiring an affirmation of citizenship. Nonetheless, the *Orlando* court expressly held that, "this ruling does not mean that the State cannot require citizenship of Florida and/or the United States in certain classes of employment; rather, it means only that citizenship cannot be a prerequisite to taking the loyalty oath given to all employees and officers of the State of Florida. \* \* \*" *City of Orlando v.*

*Florida*, 751 F. Supp. at 976. Since this rule does not require a loyalty oath, the narrow holding of *City of Orlando* does not inform this rulemaking.

(3) The rule has a rationale, namely that individuals adjudicating, or assisting in the adjudication of, immigration laws should be able to demonstrate allegiance to this country by virtue of their citizenship, as addressed in more detail in other portions of the supplementary information.

Insertion of this rule requires a slight reorganization of 8 CFR Part 3.

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

This rule has been drafted and reviewed in accordance with E.O. 12866, section 1(b), Principles of Regulation. The Attorney General has determined that this rule is not a "significant regulatory action" under E.O. 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

This rule 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 E.O. 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects in 8 CFR Part 3

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

#### PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 of title 8 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949-1953 Comp., p. 1002.

2. Section 3.0 is amended by designating its existing text as paragraph (a), and adding a heading, and by adding paragraph (b) to read as follows:

#### § 3.0 Executive Office for Immigration Review.

(a) *Organization.* \* \* \*  
(b) *Citizenship Requirement for Employment.* (1) An application to work

at the Executive Office for Immigration Review (EOIR or Agency), either as an employee or as a volunteer, must include a signed affirmation from the applicant that he or she is a citizen of the United States of America. Upon the Agency's request, the applicant must document United States citizenship.

(2) The Director of EOIR may, by explicit written determination and to the extent permitted by law, authorize the appointment of an alien to an Agency position when necessary to accomplish the work of EOIR.

Dated: May 23, 1995.

**Janet Reno,**

*Attorney General.*

[FR Doc. 95-13586 Filed 6-2-95; 8:45 am]

BILLING CODE 4410-01-M

### 8 CFR Part 3

[AG Order No. 1971-95]

#### Executive Office for Immigration Review; Board of Immigration Appeals; Expansion of the Board

AGENCY: Department of Justice.

ACTION: Final rule.

**SUMMARY:** This final rule expands the Board of Immigration Appeals to twelve permanent members, including eleven Board Members and a Chairman. The rule also retains the authority of the Director of the Executive Office for Immigration Review to designate Immigration Judges as temporary additional Board Members.

**EFFECTIVE DATE:** This final rule is effective June 5, 1995.

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

**SUPPLEMENTARY INFORMATION:** The final rule provides for an expansion of the Board of Immigration Appeals to a twelve-member permanent Board. This is necessary because of the Board's greatly increased caseload, which has more than quadrupled over the past decade. To maintain an effective, efficient system of appellate adjudication, it has become necessary to increase the number of Board Members. This change will allow the Board to sit in four permanent member panels of three. This will further enhance effective, efficient adjudications while provide for en banc review in appropriate cases.

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b). The Attorney

General has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This final rule 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 section 6 of Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is not necessary because this rule relates to agency organization and management.

#### List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Aliens.

For the reasons set forth in the preamble, 8 CFR part 3 is amended as follows:

#### PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

##### Subpart A—Board of Immigration Appeals

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

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

2. Section 3.1, paragraph (a)(1), is revised to read as follows:

##### § 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall consist of a Chairman and eleven other members. The Board Members shall exercise their independent judgment and discretion in the cases coming before the Board. A majority of the permanent Board Members shall constitute a quorum of the Board sitting en banc. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of

the remaining members to exercise all the powers of the Board. The Director may in his discretion designate Immigration Judges to act as temporary, additional Board Members for whatever time the Director deems necessary. The Chairman may divide the Board into three-member panels and designate a presiding member of each panel. The Chairman may from time to time make changes in the composition of such panels and of presiding members. Each panel shall be empowered to review cases by majority vote. A majority of the number of Board Members authorized to constitute a panel shall constitute a quorum for such panel. Each panel may exercise the appropriate authority of the Board as set out in part 3 that is necessary for the adjudication of cases before it. The permanent Board may, by majority vote on its own motion or by direction of the Chairman, consider any case en banc or reconsider en banc any case decided by a panel. By majority vote of the permanent Board, decisions of the Board shall be designated to serve as precedents pursuant to paragraph (g) of this section. There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

\* \* \* \* \*

Dated: May 25, 1995.

**Janet Reno,**

*Attorney General.*

[FR Doc. 95-13582 Filed 6-2-95; 8:45 am]

BILLING CODE 4410-01-M

### DEPARTMENT OF ENERGY

#### Office of Energy Efficiency and Renewable Energy

##### 10 CFR Part 440

[Docket No. EE-RM-94-401]

#### Weatherization Assistance Program for Low-Income Persons

AGENCY: Department of Energy.

ACTION: Interim final rule.

**SUMMARY:** The Department of Energy (DOE) is today publishing an interim final rule amending the regulations for the Weatherization Assistance Program for Low-Income Persons to change the formula used to distribute funds among the States under the Program. DOE issued the Notice of Proposed Rulemaking pursuant to the Conference Report on the Department of Interior and Related Agencies Appropriations Act of 1995 which accompanied Pub. L.

103-332 and premised the implementation of the proposed formula on specific language contained in that report. DOE is issuing this document as an interim final rule because of Congressional budgetary issues that have surfaced since the Notice of Proposed Rulemaking was published on January 23, 1995. The Department has made appropriate revisions in this interim final rule to accommodate possible rescissions to Fiscal Year 1995 appropriations to the Program.

The new formula increases the overall equity, among the States, of fund allocations under the program regulations, while at the same time preserving existing State program capabilities. The principal criteria in the formula reflect: Number of low-income households by State, climatic conditions using weather data by State, and residential energy expenditures by low-income households by State.

**EFFECTIVE DATE:** July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE-532, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 426-1698.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The Department of Energy (DOE or Department) is amending its regulations to change the formula used to distribute funds for the Weatherization Assistance Program for Low-Income Persons Program, which is authorized by Title IV of the Energy Conservation and Production Act (Act) 42 U.S.C. 6861 *et seq.* and is codified in 10 CFR part 440. The Program is also subject to the DOE general financial assistance regulations in 10 CFR part 600.

Since 1976, the Department of Energy has operated one of the nation's largest energy conservation programs—the Weatherization Assistance Program. The goal of the Program is to reduce heating and cooling costs for low-income families. The program improves the energy efficiency of the homes of low-income families, reducing their energy consumption, lowering their fuel bills, increasing the comfort of the homes, and insuring health and safety. This Program is critical to low-income populations who are particularly vulnerable—the elderly, persons with disabilities, and children.

The Program is administered by all 50 States, the District of Columbia, and certain Indian tribes, which in turn fund nearly 1,200 local agencies to provide weatherization services to eligible low-income persons. Based on priorities

identified by energy audits conducted by local agencies and other weatherization service providers, energy efficiency measures are installed, including modifications to the heating and cooling systems. Consistent with the Act, the Program focuses particularly on the housing of low-income children, elderly, and disabled persons. 42 U.S.C. 6861(b).

The formula increases the overall equity, among the States, of fund allocations under the Program regulations, while at the same time preserving existing State program capabilities. The Department is taking this action based in part on the response to a Notice of Proposed Rulemaking (NOPR) published by DOE in the **Federal Register** on January 23, 1995, 60 FR 4480. In addition to accepting written comments on the NOPR, DOE held two public hearings to solicit oral testimony.

In the Conference Report on the Department of Interior and Related Agencies Appropriations Act, 1995, the conference committee stated that sufficient funds were being made available to permit DOE to revise the formula. H.R. Conf. Rep. No. 740, 103rd Cong., 2nd Sess. 50 (1994). The intent of the Congress was to provide warmer-weather States a greater share of the funding, while protecting the Program capacity developed over the years by colder-weather States. DOE believes that the formula in the interim final rule satisfies this intent and is consistent with the requirements of the Act.

The Act requires DOE to allocate funds to States based on the relative need for weatherization assistance among low-income persons throughout the States, taking into account the following factors: (1) The number of dwelling units to be weatherized; (2) the climatic conditions in each State which may include annual degree days; (3) the various types of weatherization work to be done; and (4) other factors as determined by DOE, such as the cost of heating and cooling. 42 U.S.C. 6864(a).

In order to allocate funds under the old formula i.e., (the existing formula being revised today) each year, DOE applied the formula in old 10 CFR 440.10(b) to the amount of funds remaining after training and technical assistance funds were subtracted from the annual appropriation. The old formula established for each State a minimum base grant level of \$100,000 (Alaska received an additional \$100,000). The remaining available funds were allocated by a mathematical formula which took into account heating/cooling degree days, total residential energy use for space heating/

cooling, the number of low-income owner-occupied dwelling units, and the number of low-income renter occupied dwelling units in the State. This basic formula had remained unchanged since 1977. Data used in the formula for weather, residential energy use, and population were however updated several times. The data for program year 1993 were updated to include the 1990 census data.

As revised today, the new formula includes three elements: The number of low-income households below 125 percent of the poverty level, giving equal weight to owners and renters; climatic conditions across the country using heating and cooling degree days; and residential energy expenditures per low-income household per State.

The new formula buffers States from serious losses in program capacity, while at the same time allowing warmer-States to gain the benefits of a new formula. Consistent with these two objectives, the formula implementation establishes a fixed base amount of funds for each State that is derived from the amount received for the fiscal year 1993, while remaining funds will be distributed pursuant to the formula. Fiscal year 1993 was used to fix the base amounts because it was the most recent available data when Congress passed the fiscal year 1995 appropriation.

**II. Amendments to the Weatherization Assistance Program Formula and Discussion of Public Comments**

This part of the Supplementary Information discusses, where appropriate, the proposed changes to the regulations, comments received pertaining to the proposed changes, and the DOE final action.

*Section 440.3 Definitions*

No comments were received on the definitions and without change the Department is finalizing the proposed amendments to § 440.3.

DOE amends this section by deleting the references to the old formula which are not a part of the new formula. The definitions deleted are: "Number of owner-occupied units in the State"; "number of low-income, renter-occupied dwelling units in the State"; "percentage of total residential energy used for space cooling"; and "percentage of total residential energy used for space heating".

Additionally, several definitions are added to § 440.3 which describe the new criteria to be used in the new formula. DOE adds a definition of "base allocation," as set forth in § 440.10(b)(1), which refers to the fixed base amount each State receives. That amount is

derived from each State's fiscal year 1993 allocation of funds.

DOE also adds definitions of "program allocation" and "total program allocations." The former represents the amount of funds (base allocation plus formula allocation) to be distributed to each State. The latter refers to the annual appropriation less funds reserved for training and technical assistance.

#### Section 440.10(b) Allocation of Funds

DOE deletes the old formula in § 440.10(b) and replaces it with the new formula set forth in revised § 440.10(b). Paragraph (b)(1) of § 440.10 provides for a program allocation (PA) for each State consisting of two parts. The two parts are: (1) A fixed amount of money (derived from the State's FY 1993 allocation), which is referred to as a State's "Base Allocation" (BA) (See Table 1); and (2) an amount of money referred to as the "Formula Allocation" (FA), which is determined by application of the new formula.

As mentioned earlier, DOE held two public hearings on the NPR. Ten of the eleven speakers offered testimony in support of the proposed formula. One speaker expressed concern over the source of weather data in the form of heating and cooling degree days which was addressed in the proposed formula, but not specifically in the data. Additionally, the Department received 9 written comments generally supporting the formula change. However, 2 of the 9 written comments, while generally supporting the formula change, expressed concern about current and future funding levels, including possible Congressional budgetary actions on fiscal year 1995 appropriations and their effect on implementation. These commenters reserved the right to withdraw their support if funding levels are revised. Two commenters were generally non-supportive of the change as proposed.

One comment proposed that all funds above the fiscal year 1993 program allocation be provided to those States that would gain under the proposed formula; no other State would receive additional funds until "the previously disadvantaged States (i.e. warmer-weather States) achieve equity." Thereafter, the Program Allocation equation would be applied to all States. In making this proposal, however, the comment erroneously argues that colder-weather States would lose no money because they would remain at the current Base Allocation. In fact, limiting these States to their fiscal year 1993 base allocation would lower their program funds because they would not

benefit from later higher increases in funding levels for the Program. DOE disagrees that the new formula "assumes historic equity of the funding allocation" since the new formula does shift a greater share of funds to warmer-weather States. The new formula embodies congressional intent of allowing for a more equitable apportionment of funds while protecting program capacity of any State. For these reasons, DOE does not believe that the formula implementation contained in the notice of proposed rulemaking should be modified as suggested by this commenter.

One comment questioned the appropriateness of multiplying F2 (climate) and F3 (energy expenditures). The comment argued that these factors are so similar that the outcome is similar to the old formula, presumably the squaring (or multiplying together) of degree days. Our analysis of weather and expenditure factors, however, indicates that there is not much similarity between these two factors; that is, the analysis indicated that the weather factor is not very indicative of energy expenditures. As a result, DOE concludes that these two factors represent two distinct elements contributing to the need for weatherization assistance by low-income households. Throughout its history, the Program has been concerned with both the need for energy generated by weather conditions and the importance of helping low-income households afford their energy bills. Adding these elements, as suggested by the comment, would reduce the relative importance of each in the new formula allocation.

The same comment expressed concern that the new formula does not protect program capacity developed over the years by colder-weather States. This comment contends that the new formula provides a greater share of funds to warmer-weather States and that the formula disproportionately affects the distribution of funds. The comment thus concludes that the new formula does not "work if it requires a hold harmless clause to meet the intent of Congress." DOE notes here that the formula did not include a "hold harmless clause," *per se*. Moreover, the proposed formula as a whole balances congressional intent of maintaining program capacity and apportioning funds more equitably among the States. Under the formula, no State loses more than one-half of one-percent of FY 1994 funds unless total program allocations fall below \$220 million. All States gain when funds rise above this amount. Changing individual pieces of the formula would disrupt this

balance. Likewise, although the base allocation could be changed, changing this element of the formula would alter the resulting overall balance.

One comment recommended including only cooling degree days (CDDs) associated with an unspecified level of extreme high temperatures and formulation of the formula so that no "cold-weather" State would have an "energy factor" less than one (1). The formula does not have an energy factor *per se*. Colder States, in fact, do have weather factors greater than one. When relatively lower formula shares result for colder-weather States, it is due to fewer low-income households or lower energy prices.

Another comment indicated dissatisfaction with the methods used by the National Oceanic and Atmospheric Administration (NOAA) to calculate heating and cooling degree days. However, the comment did not offer a viable alternative that could be readily adopted. DOE notes that this rule cannot govern NOAA calculations, but that it does provide a mechanism for updating the data for the formula factors, including weather data.

One comment recommended eliminating the energy expenditure factor to avoid "taking into account the constant fluctuation in fuel prices." Energy expenditures are consumption multiplied by price. Review of recent changes in State energy prices, consumption, and resulting energy expenditures indicates that the impact of fluctuations in any of these factors on final State shares tends to be relatively small. In fact, because price and consumption changes in any given year are often partially offsetting, percentage changes in expenditures from year to year tend to be smaller than changes in consumption.

Another comment recommended that DOE phase in the formula over a five year period to correct for fluctuations in funding formula factors. This recommendation was based on the premise that it would take several years before it could be determined if the proposed formula needs to be adjusted. While there will be some fluctuation from year to year, the comment merely speculated that the degree of fluctuation warranted adding a complex adjustment to the formula. DOE agrees that there will be some fluctuation from year to year. However, DOE's analysis reveals no wide degree of fluctuation that would disrupt the Program. Thus, no change has been made in the implementation of the new formula. However, DOE will be monitoring the year to year fluctuations in the allocations. If these fluctuations are

significant and persistent, DOE should be able to identify whether a formula factor is the cause and would act to remedy the problem.

One comment suggested continuing to count the families in multi-family buildings as one-half a household. Although households in multi-family buildings tend to use less energy than households in single-family homes, these and other differences in energy use are reflected in the energy expenditure factor F3. Therefore, no change needs to be made.

Revised § 440.10(b) maintains the current capacity of States to deliver weatherization services and sustains the strong network developed for this purpose by minimizing the impact of the formula change on colder-weather States. Those States would otherwise face layoffs of weatherization crews that would severely restrict their ability to provide reasonable weatherization services to their low-income residents.

For all the reasons set forth above, DOE has made no substantive changes in the proposed § 440.10(b).

*Summary of Revised Formula*

An explanation of the revised allocated allocation formula is set forth below. This explanation is based on the summary provided in the notice of proposed rulemaking, with minor clarifying changes. The figures contained in Tables 1 through 5 are based on available data as of fiscal year 1995. Depending upon changes in data available thereafter, some of these figures may change periodically. See § 440.10(e) for further information pertaining to updates.

The program allocation is expressed mathematically as:

$$PA=BA+FA$$

**Base Allocation**

Table 1 presents the "Base Allocation" for each State.

TABLE 1.—"BASE ALLOCATION" BY STATE

Alabama	1,636,000
Alaska	1,425,000
Arkansas	1,417,000
Arizona	760,000
California	4,404,000
Colorado	4,574,000
Connecticut	1,887,000
Delaware	409,000
District of Columbia	487,000
Florida	761,000
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	2,493,000
Maryland	1,963,000
Massachusetts	5,111,000
Michigan	12,346,000
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	4,615,000
Montana	2,123,000
Nebraska	2,013,000
Nevada	586,000
New Hampshire	1,193,000
New Jersey	3,775,000
New Mexico	1,519,000
New York	15,302,000
North Carolina	2,853,000
North Dakota	2,105,000
Ohio	10,665,000
Oklahoma	1,846,000
Oregon	2,320,000
Pennsylvania	11,457,000
Rhode Island	878,000
South Carolina	1,130,000
South Dakota	1,561,000
Tennessee	3,218,000
Texas	2,999,000
Utah	1,692,000
Vermont	1,014,000
Virginia	2,970,000
Washington	3,775,000
West Virginia	2,573,000
Wisconsin	7,061,000
Wyoming	967,000
Total	171,258,000

**Formula Allocation**

The amount of total Formula Allocations (the amount which will be distributed among States based on the new formula) is calculated by subtracting total Base Allocations (\$171,258,000) from the total Program Allocations. For example, if the amount of total Program Allocations is \$200,000,000, the amount of total Formula Allocations would be \$28,742,000 (\$200,000,000-\$171,258,000).

The Formula Allocation for each State is calculated by multiplying the total amount of Formula Allocations by each State's Formula Share, which is determined by the new formula.

**Formula Factors**

The new formula is composed of three factors for each State. The first factor (F1) is the population factor. The next factor (F2) represents the climatic conditions in each State, derived from heating and cooling degree days. The last factor (F3) is residential energy expenditures by low-income households in each State.

*F1 Population Factor*

The first factor in the new formula is the population factor. This is represented by the share of the Nation's low-income households in each State expressed as a percentage. Unlike the old formula, the new formula gives equal weight to owners and renters. The number of low-income households was obtained from a special run by the Bureau of the Census for the Department of Energy, referenced as "Households at 125% or less, Special Tab #54, Census Bureau".

F1—State Population Factor

$$F1 = \frac{\text{Total Number of Low - Income Households in the State}}{\text{Total Number of Low - Income Households Nationwide}} \times 100$$

Table 2 presents the number of low-income households and the population factor (F1) for each State.

*Table Explanation*

Column A—State Name.

Column B—Number of Low-Income Households per State.

Column C—State Population Factor (F1)—is calculated by dividing the number of low-income households in a given State (Column B) by the national total (16,231,250—shown at the bottom of the table) and multiplied by 100.

TABLE 2.—LOW-INCOME HOUSEHOLDS BY STATE

State	Number of low-income households	Percent of national low-income households (F1)
A	B	C
Alabama .....	386,525	2.3814
Alaska .....	21,729	0.1339
Arizona .....	261,161	1.6090
Arkansas .....	240,155	1.4796
California .....	1,525,061	9.3958
Colorado .....	206,052	1.2695
Connecticut .....	120,483	0.7423
Delaware .....	31,028	0.1912
District of Columbia .....	46,438	0.2861
Florida .....	879,786	5.4203
Georgia .....	471,834	2.9069
Hawaii .....	40,856	0.2517
Idaho .....	69,204	0.4264
Illinois .....	657,508	4.0509
Indiana .....	327,581	2.0182
Iowa .....	184,021	1.1337
Kansas .....	163,891	1.0097
Kentucky .....	357,665	2.2036
Louisiana .....	442,320	2.7251
Maine .....	80,276	0.4946
Maryland .....	196,788	1.2124
Massachusetts .....	313,297	1.9302
Michigan .....	598,427	3.6869
Minnesota .....	247,149	1.5227
Mississippi .....	294,611	1.8151
Missouri .....	377,864	2.3280
Montana .....	68,456	0.4218
Nebraska .....	104,707	0.6451
Nevada .....	64,869	0.3997
New Hampshire .....	43,406	0.2674
New Jersey .....	303,328	1.8688
New Mexico .....	135,642	0.8357
New York .....	1,138,016	7.0113
North Carolina .....	489,172	3.0138
North Dakota .....	51,103	0.3148
Ohio .....	705,646	4.3475
Oklahoma .....	284,883	1.7552
Oregon .....	191,508	1.1799
Pennsylvania .....	725,124	4.4675
Rhode Island .....	57,155	0.3521
South Carolina .....	274,749	1.6927
South Dakota .....	56,917	0.3507
Tennessee .....	418,703	2.5796
Texas .....	1,345,471	8.2894
Utah .....	88,775	0.5469
Vermont .....	32,563	0.2006
Virginia .....	333,824	2.0567
Washington .....	280,943	1.7309
West Virginia .....	184,759	1.1383
Wisconsin .....	279,527	1.7222
Wyoming .....	30,294	0.1866
National Total .....	16,231,250	100

*F2 Climate Factor*

The second factor, climatic conditions, is obtained by adding the heating and cooling degree days for each State, treating the energy needed for heating and cooling proportionately.

The new formula uses (as did the old formula) the thirty year averages of heating degree days (HDD) and cooling degree days (CDD) as reported by the National Oceanic and Atmospheric Administration (NOAA) to account for climatic conditions. Heating and cooling consumption data were obtained from Table 28 of the Energy Information Administration's (EIA) Household Energy Consumption and Expenditures 1990.

State Climate Factor

$$F2 = \text{HDD State Ratio} + \text{CDD State Ratio}$$

HDD and CDD Ratios

State HDD Ratio

$$\text{State HDD Ratio} = \frac{\text{State HDD}}{\text{National Median HDD}}$$

State CDD Ratio

$$\text{State CDD Ratio} = \frac{\text{State CDD}}{\text{National Median CDD}} \times 0.1$$

where

$$\frac{\text{Cooling Consumption (.49 Quadrillion Btu)}}{\text{Heating Consumption (4.79 Quadrillion Btu)}} = 0.1$$

National heating consumption equals 4.79 quadrillion Btu and air conditioning (cooling) consumption equals .49 quadrillion Btu. Cooling consumption divided by heating consumption rounds to 0.1. The ratio of cooling to heating energy consumption reflects the fact that nationally households use, on average, one tenth as much energy for cooling as for heating. This ratio is reflected in the old allocation formula. National data are used because of the absence of complete State-specific data.

In order to account for the variation in weather in a simple but equitable manner, DOE compares each State's climate to the national median. Each State's HDD and CDD is divided by the series' median value. Using the median as the denominator ensures that half of the States would fall above 1 and half would fall below 1. A State HDD ratio (HDD divided by the median) greater than 1 indicates a State with relatively cold winters, while a value greater than 1 for a State's CDD ratio indicates a

State with a relatively warmer summer. To find the median of any odd series of numbers, the series is arranged in ascending order and the value that occurs in the middle of the series is chosen. The series relevant to F2 is odd because it consists of the 50 States and the District of Columbia. The median value occurs at the 26th observation (State). The median was chosen, rather than the mean, because of its characteristic of being "insensitive" to extreme values. States like Alaska and Florida tend to skew or pull the average towards one extreme or another. In calculating the heating and cooling ratios the old formula multiplied each State's HDD's by the national space heating consumption and its CDD's by the national air conditioning (cooling) consumption. The new formula simplifies this calculation by combining these two numbers into one by dividing cooling consumption by heating consumption (as reported in Table 28 of the Household Energy Consumption and Expenditures 1990). Each State's CDD

ratio is multiplied by this one number (which rounds to 0.1). The final climate factor for each State is then the sum of the HDD and CDD ratios.

Table 3 presents the data used to calculate the climate factor (F2) for each State.

Table Explanation

Column A—State Name.

Column B—State heating degree days (HDD) as reported by the NOAA.

Column C—State HDD Ratio, calculated by dividing each State's HDD by the national median (5,429.9—as shown on the bottom of Table 2).

Column D—State cooling degree days (CDD) as reported by the NOAA.

Column E—State CDD divided by the national median (867.3—as shown on the bottom of Table 2).

Column F—State CDD Ratio, calculated by multiplying Column E by the ratio of cooling consumption to heating consumption, which is 0.1.

Column G—State Climate Factor (F2), calculated by summing each State's HDD and CDD ratios.

TABLE 3.—WEATHER DATA BY STATE

State	Heating degree days	HDD ratio	Cooling degree days	CDD divided by the median	CDD ratio	Climate factor (F2)
A	B	C	D	E	F	G
Alabama .....	2,853.8	0.526	1,855.9	2.140	0.214	0.740
Alaska .....	11,475.2	2.113	1.9	0.002	0.000	2.114
Arizona .....	2,232.6	0.411	2,695.4	3.108	0.311	0.722
Arkansas .....	3,365.0	0.620	1,801.2	2.077	0.208	0.827
California .....	2,663.3	0.490	824.4	0.951	0.095	0.586
Colorado .....	7,264.0	1.338	280.4	0.323	0.032	1.370
Connecticut .....	6,122.4	1.128	526.6	0.607	0.061	1.188
Delaware .....	4,741.7	0.873	1,034.4	1.193	0.119	0.993
District of Columbia .....	4,785.7	0.881	1,008.5	1.163	0.116	0.998
Florida .....	715.6	0.132	3,365.1	3.880	0.388	0.520
Georgia .....	2,842.0	0.523	1,705.7	1.967	0.197	0.720
Hawaii .....	0.0	0.000	3,528.0	4.068	0.407	0.407
Idaho .....	6,960.0	1.282	434.9	0.501	0.050	1.332
Illinois .....	6,254.3	1.152	894.3	1.031	0.103	1.255
Indiana .....	5,906.8	1.088	891.7	1.028	0.103	1.191
Iowa .....	6,894.6	1.270	867.3	1.000	0.100	1.370
Kansas .....	4,990.9	0.919	1,490.4	1.718	0.172	1.091

TABLE 3.—WEATHER DATA BY STATE—Continued

State	Heating degree days	HDD ratio	Cooling degree days	CDD divided by the median	CDD ratio	Climate factor (F2)
A	B	C	D	E	F	G
Kentucky .....	4,566.8	0.841	1,174.4	1.354	0.135	0.976
Louisiana .....	1,826.1	0.336	2,550.0	2.940	0.294	0.630
Maine .....	8,069.2	1.486	215.6	0.249	0.025	1.511
Maryland .....	4,785.7	0.881	1,008.5	1.163	0.116	0.998
Massachusetts .....	6,404.5	1.179	434.6	0.501	0.050	1.230
Michigan .....	6,837.5	1.259	565.7	0.652	0.065	1.324
Minnesota .....	8,687.0	1.600	487.3	0.562	0.056	1.656
Mississippi .....	2,549.5	0.470	2,094.4	2.415	0.241	0.711
Missouri .....	5,127.4	0.944	1,282.2	1.478	0.148	1.092
Montana .....	8,144.8	1.500	259.4	0.299	0.030	1.530
Nebraska .....	6,412.3	1.181	1,052.0	1.213	0.121	1.302
Nevada .....	4,260.1	0.785	1,572.0	1.813	0.181	0.966
New Hampshire .....	7,594.6	1.399	289.4	0.334	0.033	1.432
New Jersey .....	5,429.9	1.000	774.6	0.893	0.089	1.089
New Mexico .....	4,714.2	0.868	890.2	1.026	0.103	0.971
New York .....	5,960.8	1.098	641.4	0.740	0.074	1.172
North Carolina .....	3,492.2	0.643	1,366.3	1.575	0.158	0.801
North Dakota .....	9,382.8	1.728	471.7	0.544	0.054	1.782
Ohio .....	5,932.2	1.093	740.2	0.853	0.085	1.178
Oklahoma .....	3,593.3	0.662	1,941.6	2.239	0.224	0.886
Oregon .....	5,228.6	0.963	207.0	0.239	0.024	0.987
Pennsylvania .....	5,920.7	1.090	659.2	0.760	0.076	1.166
Rhode Island .....	5,942.0	1.094	457.2	0.527	0.053	1.147
South Carolina .....	2,768.2	0.510	1,787.0	2.060	0.206	0.716
South Dakota .....	7,613.7	1.402	804.6	0.928	0.093	1.495
Tennessee .....	4,005.8	0.738	1,337.5	1.542	0.154	0.892
Texas .....	2,039.7	0.376	2,623.2	3.025	0.302	0.678
Utah .....	6,451.3	1.188	694.7	0.801	0.080	1.268
Vermont .....	7,970.9	1.468	280.5	0.323	0.032	1.500
Virginia .....	4,402.4	0.811	1,052.4	1.213	0.121	0.932
Washington .....	5,636.0	1.038	174.9	0.202	0.020	1.058
West Virginia .....	5,271.5	0.971	766.5	0.884	0.088	1.059
Wisconsin .....	7,679.2	1.414	502.5	0.579	0.058	1.472
Wyoming .....	8,081.3	1.488	308.5	0.356	0.036	1.524
Median .....	5,429.9	.....	867.3	.....	.....	.....

*F3 Residential Energy Expenditure Factor*

The final factor, residential energy expenditures by low-income households was determined to be the closest approximation, given available data, of the financial burden to low-income households of energy use. Based on the same reasoning as discussed for the climate factor, the national median is used to calculate the State residential energy expenditure factors.

State Residential Energy Expenditure Factor

$$F3 = \frac{\text{State Low - Income Household Energy Expenditures}}{\text{National Median Low - Income Household Energy Expenditures}}$$

Due to the lack of State specific data on residential energy expenditures by low-income households, an estimate is calculated based on the published data that is available. Specifically, available residential energy expenditures data at the State level does not distinguish between low-income households and the overall population. Information on residential energy expenditures by low-income households is available at the Census division level. The nine Census divisions including the States contained therein are shown below. Comparing each State's average household residential energy expenditures with the average household residential energy expenditures at its Census division level provides a means of allocating the Census division low-income residential energy expenditures to each State within that division.

Census division	State abbreviations
Northeast (NE) .....	CT, MA, ME, NH, RI, VT
Mid-Atlantic (MA) .....	NJ, NY, PA
South Atlantic (SA) ...	DC, DE, MD, VA, WV, FL, GA, SC, NC
East North Central (ENC).	IL, IN, MI, OH, WI
East South Central (ESC).	AL, KY, MS, TN
West North Central (WNC).	IA, KS, MN, MO, ND, NE, SD
West South Central (WSC).	AR, LA, OK, TX
Mountain (MN) .....	AZ, CO, ID, MT, NM, NV, UT, WY
Pacific (PAC) .....	AK, CA, HI, OR, WA

Table 4, set forth below, presents the data used to calculate the residential energy expenditures factor for each State.

**Table Explanation**

Column A—State Abbreviation.

Column B—Census Division Abbreviation.

Column C—Residential Energy Expenditures by State (State EE) is published in the EIA's State Energy Price and Expenditure Report 1991 (SEPER). Data is expressed in millions of dollars.

Column D—Residential Energy Expenditures by Census division (Div EE) is the sum of the State data in Column C for each Census division. Data is expressed in millions of dollars.

Column E—Number of Households per State (State #HH) was obtained from the Bureau of the Census' U.S. Summary of General Housing Characteristics, 1990 Census.

Column F—Number of Households per Census division (Division #HH) is the sum of the State data in Column E for each Census division.

Column G—Residential Energy Expenditures per Low-Income Household for each State's Census division (Division EE/#LIHH) is

published in the EIA's Household Energy Consumption and Expenditures 1990—Supplement: Regional.

Column H—The ratio of each State's Residential Energy Expenditures per Household (State EE/#HH) over the Residential Energy Expenditures per Household for each State's Census division (Division EE/#HH) is calculated as follows:

$$\text{Column H} = \frac{\text{Column C} / \text{Column E}}{\text{Column D} / \text{Column F}}$$

Column I—Residential Energy Expenditures per Low-Income Household by State (State EE/#LIHH) is calculated as follows:

$$\text{Column I} = \text{Column G} \times \text{Column H}$$

Column J—"Residential Energy Expenditure Factor (F3)" is calculated by dividing the estimate of residential energy expenditures per low-income households for each State by the national median (\$998.52).

TABLE 4.—RESIDENTIAL ENERGY EXPENDITURE FACTOR DETAILS

State abbrev.	Census division	Residential energy expenditures (by state) (million \$)	Residential energy expenditures (for census division) (million \$)	Households (by state)	Households (for census division)	Residential energy expenditures per low-income household (for census division)	Ratio of state energy expenditure per household to division energy expenditure per household	Residential energy expenditures per low-income household (by state)	Expenditure factor (F3)
A	B	C	D	E	F	G	H	I	J
CT .....	NE	\$2,024.20	\$7,476.80	\$1,230,479	\$4,942,714	\$1,150	\$1.087	\$1,250.62	\$1.2565
MA .....	NE	3,264.10	7,476.80	2,247,110	4,942,714	1,150	0.960	1,104.30	1.1095
ME .....	NE	708.30	7,476.80	465,312	4,942,714	1,150	1.006	1,157.23	1.1627
NH .....	NE	596.90	7,476.80	411,186	4,942,714	1,150	0.960	1,103.60	1.1088
RI .....	NE	530.50	7,476.80	377,977	4,942,714	1,150	0.928	1,067.01	1.0720
VT .....	NE	352.80	7,476.80	210,650	4,942,714	1,150	1.107	1,273.25	1.2792
NJ .....	MA	4,114.50	19,378.30	2,794,711	13,929,999	1,157	1.058	1,224.47	1.2302
NY .....	MA	8,785.50	19,378.30	6,639,322	13,929,999	1,157	0.951	1,100.55	1.1057
DC .....	SA	222.40	20,804.00	249,634	16,503,063	988	0.707	698.24	0.7015
DE .....	SA	369.30	20,804.00	247,497	16,503,063	988	1.184	1,169.46	1.1749
MD .....	SA	2,309.50	20,804.00	1,748,991	16,503,063	988	1.047	1,034.92	1.0398
PA .....	MA	6,478.30	19,378.30	4,495,966	13,929,999	1,157	1.036	1,198.41	1.2040
VA .....	SA	2,920.60	20,804.00	2,291,830	16,503,063	988	1.011	998.77	1.0034
WV .....	SA	742.10	20,804.00	688,557	16,503,063	988	0.855	844.69	0.8486
AL .....	ESC	1,857.90	6,423.40	1,506,790	5,651,671	772	1.085	837.53	0.8415
FL .....	SA	6,144.50	20,804.00	5,134,869	16,503,063	988	0.949	937.85	0.9422
GA .....	SA	3,063.30	20,804.00	2,366,615	16,503,063	988	1.027	1,014.46	1.0192
KY .....	ESC	1,474.00	6,423.40	1,379,782	5,651,671	772	0.940	725.63	0.7290
MS .....	ESC	1,068.00	6,423.40	911,374	5,651,671	772	1.031	795.98	0.7997
NC .....	SA	3,390.90	20,804.00	2,517,026	16,503,063	988	1.069	1,055.85	1.0608
SC .....	SA	1,641.40	20,804.00	1,258,044	16,503,063	988	1.035	1,022.57	1.0274
TN .....	ESC	2,023.50	6,423.40	1,853,725	5,651,671	772	0.960	741.46	0.7449
IL .....	ENC	6,017.80	20,660.20	4,202,240	15,596,590	1,074	1.081	1,161.06	1.1665
IN .....	ENC	2,644.70	20,660.20	2,065,355	15,596,590	1,074	0.967	1,038.20	1.0431
MI .....	ENC	4,339.90	20,660.20	3,419,331	15,596,590	1,074	0.958	1,029.05	1.0339
MN .....	WNC	1,868.50	8,200.60	1,647,853	6,720,385	968	0.929	899.49	0.9037
OH .....	ENC	5,420.90	20,660.20	4,087,546	15,596,590	1,074	1.001	1,075.25	1.0803
WI .....	ENC	2,236.90	20,660.20	1,822,118	15,596,590	1,074	0.927	995.34	1.0000
AR .....	WSC	1,168.50	12,362.20	891,179	9,667,520	971	1.025	995.64	1.0003
LA .....	WSC	1,950.10	12,362.20	1,499,269	9,667,520	971	1.017	987.68	0.9923
NM .....	MT	545.40	5,476.10	542,709	5,033,336	888	0.924	820.25	0.8241
OK .....	WSC	1,441.60	12,362.20	1,206,135	9,667,520	971	0.935	907.59	0.9118

TABLE 4.—RESIDENTIAL ENERGY EXPENDITURE FACTOR DETAILS—Continued

State abbrev.	Census division	Residential energy expenditures (by state) (million \$)	Residential energy expenditures (for census division) (million \$)	Households (by state)	Households (for census division)	Residential energy expenditures per low-income household (for census division)	Ratio of state energy expenditure per household to division energy expenditure per household	Residential energy expenditures per low-income household (by state)	Expenditure factor (F3)
A	B	C	D	E	F	G	H	I	J
TX .....	WSC	7,802.00	12,362.20	6,070,937	9,667,520	971	1.005	975.86	0.9804
IA .....	WNC	1,355.70	8,200.60	1,064,325	6,720,385	968	1.044	1,010.45	1.0152
KS .....	WNC	1,138.90	8,200.60	944,726	6,720,385	968	0.988	956.32	0.9608
MO .....	WNC	2,539.40	8,200.60	1,961,206	6,720,385	968	1.061	1,027.15	1.0320
NE .....	WNC	680.70	8,200.60	602,363	6,720,385	968	0.926	896.44	0.9006
CO .....	MT	1,214.70	5,476.10	1,282,489	5,033,336	888	0.871	773.06	0.7767
MT .....	MT	321.50	5,476.10	306,163	5,033,336	888	0.965	857.09	0.8611
ND .....	WNC	303.20	8,200.60	240,878	6,720,385	968	1.032	998.52	1.0032
SD .....	WNC	314.20	8,200.60	259,034	6,720,385	968	0.994	962.22	0.9667
UT .....	MT	620.90	5,476.10	537,273	5,033,336	888	1.062	943.24	0.9477
WY .....	MT	194.40	5,476.10	168,839	5,033,336	888	1.058	939.77	0.9442
AZ .....	MT	1,694.00	5,476.10	1,368,843	5,033,336	888	1.137	1,010.08	1.0148
CA .....	PAC	10,642.80	13,958.20	10,381,206	13,902,132	676	1.021	690.25	0.6935
HI .....	PAC	273.20	13,958.20	356,267	13,902,132	676	0.764	516.30	0.5187
NV .....	MT	493.20	5,476.10	466,297	5,033,336	888	0.972	863.29	0.8673
AK .....	PAC	349.00	13,958.20	188,915	13,902,132	676	1.840	1,243.82	1.2496
ID .....	MT	392.00	5,476.10	360,723	5,033,336	888	0.999	886.97	0.8911
OR .....	PAC	1,013.60	13,958.20	1,103,313	13,902,132	676	0.915	618.54	0.6214
WA .....	PAC	1,679.60	13,958.20	1,872,431	13,902,132	676	0.893	603.95	0.6068
Total/Median .....		.....	.....	.....	.....	.....	.....	995.34	.....

The underlying assumption in the calculation of State residential energy expenditures per low-income household is that the relationship between a State's residential energy expenditures per household and its respective divisional residential energy expenditures per household is the same for its low-income population as it is for its general population. If State Y's average household spends 100 percent more on residential energy than the average household in its Census division, then it is assumed that the low-income households in State Y will also spend 100 percent more on residential energy than the average low-income household in its division. For example, assume State Y's residential energy expenditures per general household is \$2,000 and the average residential energy expenditures per general household in its division is \$1,000. If

the average residential energy expenditures per low-income households for the division is \$800, then the residential energy expenditures per low-income household for State Y would be \$1,600.

*Formula Share*

The above factors are combined into a single formula by multiplying the percent of low-income households (F1) in each State by the climate factor (F2) and the residential energy expenditures factor (F3) for that State. For explanation purposes, the result of applying the formula to a given State will now be called the State's weight (SW), as follows:  
 $SW = F1 \times F2 \times F3$

These State-by-State calculations do not necessarily sum to one. As a result, each State's weight must be divided by the national total of each State's weight

to obtain the State's Formula Share, as follows:

$$\text{State's Formula Share} = \frac{\text{State's Weight}}{\text{National Total}}$$

Table 5 shows the three factors (from the previous tables) for each State along with each State's weight and Formula Share.

*Table Explanation*

Column A—State Name.

Column B—State's Population Factor (F1).

Column C—State's Climatic Factor (F2).

Column D—State's Residential Energy Expenditures Factor (F3).

Column E—State's Weight— $F1 \times F2 \times F3$ .

Column F—State's Formula Share—State's weight (Column E) divided by the national total (the sum of Column E).

TABLE 5.—FORMULA FACTORS, WEIGHT AND FORMULA SHARE BY STATE

State	F1	F2	F3	Weight	Share
A	B	C	D	E	F
Alabama	2.381	0.740	0.841	1.482	0.0156
Alaska	0.134	2.114	1.250	0.354	0.0037
Arizona	1.609	0.722	1.015	1.179	0.0124
Arkansas	1.480	0.827	1.000	1.225	0.0129
California	9.396	0.586	0.693	3.815	0.0401
Colorado	1.269	1.370	0.777	1.351	0.0142
Connecticut	0.742	1.188	1.256	1.108	0.0117
Delaware	0.191	0.993	1.175	0.223	0.0023
District of Columbia	0.286	0.998	0.702	0.200	0.0021
Florida	5.420	0.520	0.942	2.655	0.0279
Georgia	2.907	0.720	1.019	2.133	0.0224
Hawaii	0.252	0.407	0.519	0.053	0.0006
Idaho	0.426	1.332	0.891	0.506	0.0053
Illinois	4.051	1.255	1.167	5.930	0.0624
Indiana	2.018	1.191	1.043	2.507	0.0264
Iowa	1.134	1.370	1.015	1.577	0.0166
Kansas	1.010	1.091	0.961	1.058	0.0111
Kentucky	2.204	0.976	0.729	1.569	0.0165
Louisiana	2.725	0.630	0.992	1.704	0.0179
Maine	0.495	1.511	1.163	0.869	0.0091
Maryland	1.212	0.998	1.040	1.258	0.0132
Massachusetts	1.930	1.230	1.109	2.633	0.0277
Michigan	3.687	1.324	1.034	5.049	0.0531
Minnesota	1.523	1.656	0.904	2.279	0.0240
Mississippi	1.815	0.711	0.800	1.032	0.0109
Missouri	2.328	1.092	1.032	2.624	0.0276
Montana	0.422	1.530	0.861	0.556	0.0058
Nebraska	0.645	1.302	0.901	0.757	0.0080
Nevada	0.400	0.966	0.867	0.335	0.0035
New Hampshire	0.267	1.432	1.109	0.425	0.0045
New Jersey	1.869	1.089	1.230	2.504	0.0263
New Mexico	0.836	0.971	0.824	0.669	0.0070
New York	7.011	1.172	1.106	9.084	0.0955
North Carolina	3.014	0.801	1.061	2.560	0.0269
North Dakota	0.315	1.782	1.003	0.563	0.0059
Ohio	4.347	1.178	1.080	5.532	0.0582
Oklahoma	1.755	0.886	0.912	1.417	0.0149
Oregon	1.180	0.987	0.621	0.724	0.0076
Pennsylvania	4.467	1.166	1.204	6.274	0.0660
Rhode Island	0.352	1.147	1.072	0.433	0.0046
South Carolina	1.693	0.716	1.027	1.245	0.0131
South Dakota	0.351	1.495	0.967	0.507	0.0053
Tennessee	2.580	0.892	0.745	1.714	0.0180
Texas	8.289	0.678	0.980	5.511	0.0580
Utah	0.547	1.268	0.948	0.657	0.0069
Vermont	0.201	1.500	1.279	0.385	0.0040
Virginia	2.057	0.932	1.003	1.924	0.0202
Washington	1.731	1.058	0.607	1.111	0.0117
West Virginia	1.138	1.059	0.849	1.023	0.0108
Wisconsin	1.722	1.472	1.000	2.535	0.0267
Wyoming	0.187	1.524	0.944	0.269	0.0028
National Total				95.083	1.0000

Each State's share of the "Formula Allocation" is then calculated by multiplying the total "Formula Allocation" by each State's "Formula Share".

*Section 440.10(c) Allocation of Funds*

Two comments noted that since the NOPR was published on January 23, 1995, Congressional budgetary issues, which may affect the level of program funds available, have surfaced. In the

NOPR, § 440.10(c) referred to fiscal year 1995 funding. At that time, the Department contemplated possible reductions in funding beginning after fiscal year 1995. Because of the possibility of reductions in fiscal year 1995 funding, this provision has been modified from the proposed language to clarify that the level of appropriations referred to in this section is that found in Pub. L. 103-332. Therefore, any increase in funds above the total

program allocations level under Pub. L. 103-332 will be allocated according to the new formula. Should total program allocations for any fiscal year fall below the total program allocations under Pub. L. 103-332, then each State's program allocation shall be reduced from its allocated amount under Pub. L. 103-332 by the same percentage. For example, if total program allocations for a given year were 10 percent below the amount under Pub. L. 103-332, then each State's

program allocation would be 10 percent less than under Pub. L. 103-332. This approach distributes the effect of lower appropriations equitably.

#### *Section 440.10(d) Allocation of Funds*

In § 440.10(d), DOE clarifies the sources of data used in the new formula. All sources of data are publicly available. Since publication of the NOPR, DOE has obtained updated data on State energy expenditures and incorporated this new data in Tables 4 and 5 of this interim final rule.

#### *Section 440.10(e) Allocation of Funds*

Section 440.10(e) alerts States of possible impacts on their weatherization programs that may occur due to changes in data. For any given program year when changes occur, DOE will delay reallocations based on new data until the following year. This allows States to plan for anticipated shifts in funds and develop alternative strategies for minimizing the impact of such change.

#### *Section 440.12 State Application*

In § 440.12(b)(4) the term "tentative allocation" is deleted and "program allocation" is substituted to provide consistency with § 440.10. It should be noted that the original intent in using the term "tentative allocation", that is, retaining DOE's discretion to reallocate funds if they are not used on a timely basis, is preserved by substituting "program allocation" as it applies in § 440.10 (f) and (g). The term "tentatively" in § 440.14(b)(9)(vi) is deleted.

#### *Section 440.14 State Plans*

In § 440.14(b)(8)(i) the term "tentative allocation" has been retained. This term in context refers to State allocation (rather than DOE allocation) of funds among their subgrantees and the right of the State, after providing appropriate due process, to reduce or withdraw these funds for non-performance or other deficiencies.

### **III. Interim Final Effect**

DOE has issued today's regulatory amendments as an interim final rule to reserve the possibility of reopening the record in light of the ultimate disposition of pending budgetary bills during the current session of Congress. The Department anticipates removing the interim final designation before the end of 1995.

### **IV. Review Under Executive Order 12866**

Today's regulatory action has been determined not to be a significant regulatory action under Executive Order

12866. Accordingly, today's action was not subject to review under the Executive Order by the Office of Management and Budget.

### **V. Review Under Executive Order 12778**

Section 2 of E.O. 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulation to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, any effect on existing Federal law or regulation, and any retroactive effect; describes any administrative proceedings to be available to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's regulation meets the requirements of sections 2(a) and (b) of E.O. 12778.

### **VI. Review Under Executive Order 12612**

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or on the distribution of power among various levels of Government. If there are sufficient substantial direct effects, the Executive Order requires preparation of a federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation.

Today's regulatory action will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a federalism assessment is therefore unnecessary.

### **VII. Review Under the Regulatory Flexibility Act**

The regulations were reviewed under the Regulatory Flexibility Act, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any proposed regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. DOE has concluded that the interim final rule will affect the States and local agencies operating weatherization programs, especially in the warmer-weather States which will

receive more funding. The incremental effect of the final changes relates to the distribution of approximately \$20 million. Thus this incremental effect when spread among all of the States and the District of Columbia will not have a significant impact on a substantial number of small entities. Therefore, DOE certifies that there will not be a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

### **VIII. Review Under the Paperwork Reduction Act**

No new information collection or recordkeeping requirements are imposed on the public by today's interim final rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., or implementing regulations at 5 CFR part 1320.

### **IX. Review Under National Environmental Policy Act**

The interim final rule provides the new formula which will be used to distribute funds among the States pursuant to the regulations for the Weatherization Assistance Program for Low-Income Persons. Over the years many warmer-weather States have maintained that the old formula overallocated funds to colder-weather States. The purpose of the new formula is to increase the overall equity among the States. The Department has determined that this interim final rule is covered under the Categorical Exclusion found at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### **X. Other Federal Agencies**

DOE provided draft copies of the interim final rule to the Department of Health and Human Services Low-Income Home Energy Assistance Program and the Department of Agriculture Farmers Home Administration. No comments were received. DOE also provided a draft copy to the Administrator of the Environmental Protection Agency, pursuant to section 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator did not submit any comment.

### **XI. The Catalog of Federal Domestic Assistance**

The *Catalog of Federal Domestic Assistance* number for the

Weatherization Assistance Program for Low-Income Persons is 81.042.

**List of Subjects in 10 CFR Part 440**

Administrative practice and procedure, Aged, Energy conservation, Grant programs-energy, Grant programs-housing and community development, Handicapped, Housing standards, Indians, Reporting and recordkeeping requirements, and Weather.

Issued in Washington, DC, on May 25, 1995.

**Christine A. Ervin,**  
Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE hereby amends chapter II of title 10, Code of Federal Regulations, as set forth below:

**PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS**

1. The authority citation for part 440 is revised to read as follows:

**Authority:** 42 U.S.C. 6861–6871; 42 U.S.C. 7191.

2. In § 440.3, remove the definitions for “Number of Low-Income, Owner Occupied Dwelling Units in the State”; “Number of Low-Income, Renter-Occupied Dwelling Units in the State”; “Percentage of Total Residential Energy Used for Space Cooling”; “Percentage of Total Residential Energy Used for Space Heating”; and add the following definitions in alphabetical order to read as follows.

**§ 440.3 Definitions.**

\* \* \* \* \*

*Base Allocation* means the fixed amount of funds for each State as set forth in § 440.10(b)(1).

\* \* \* \* \*

*Formula Allocation* means the amount of funds for each State as calculated based on the formula in § 440.10(b)(3).

*Formula Share* means the percentage of the total formula allocation provided to each State as calculated in § 440.10(b)(3).

\* \* \* \* \*

*Program Allocation* means the base allocation plus formula allocation for each State.

\* \* \* \* \*

*Residential Energy Expenditures* means the average annual cost of purchased residential energy, including the cost of renewable energy resources.

\* \* \* \* \*

*Total Program Allocations* means the annual appropriation less funds

reserved for training and technical assistance.

\* \* \* \* \*

3. Section 440.10 is revised to read as follows:

**§ 440.10 Allocation of funds.**

(a) DOE shall allocate financial assistance for each State from sums appropriated for any fiscal year, upon annual application.

(b) Based on total program allocations at or above the amount of total program allocations under Pub. L. 103–332, DOE shall determine the program allocation for each State from available funds as follows:

(1) Allocate to each State a “Base Allocation” as listed in Table 1.

TABLE 1

Alabama .....	1,636,000
Alaska .....	1,425,000
Arkansas .....	1,417,000
Arizona .....	760,000
California .....	4,404,000
Colorado .....	4,574,000
Connecticut .....	1,887,000
Delaware .....	409,000
District of Columbia .....	487,000
Florida .....	761,000
Georgia .....	1,844,000
Hawaii .....	120,000
Idaho .....	1,618,000
Illinois .....	10,717,000
Indiana .....	5,156,000
Iowa .....	4,032,000
Kansas .....	1,925,000
Kentucky .....	3,615,000
Louisiana .....	912,000
Maine .....	2,493,000
Maryland .....	1,963,000
Massachusetts .....	5,111,000
Michigan .....	12,346,000
Minnesota .....	8,342,000
Mississippi .....	1,094,000
Missouri .....	4,615,000
Montana .....	2,123,000
Nebraska .....	2,013,000
Nevada .....	586,000
New Hampshire .....	1,193,000
New Jersey .....	3,775,000
New Mexico .....	1,519,000
New York .....	15,302,000
North Carolina .....	2,853,000
North Dakota .....	2,105,000
Ohio .....	10,665,000
Oklahoma .....	1,846,000
Oregon .....	2,320,000
Pennsylvania .....	11,457,000
Rhode Island .....	878,000
South Carolina .....	1,130,000
South Dakota .....	1,561,000
Tennessee .....	3,218,000
Texas .....	2,999,000
Utah .....	1,692,000
Vermont .....	1,014,000
Virginia .....	2,970,000
Washington .....	3,775,000
West Virginia .....	2,573,000
Wisconsin .....	7,061,000

TABLE 1—Continued

Wyoming .....	967,000
Total .....	171,258,000

(2) Subtract 171,258,000 from total program allocations.

(3) Calculate each State’s formula share as follows:

(i) Divide the number of “Low Income” households in each State by the number of “Low Income” households in the United States and multiply by 100.

(ii) Divide the number of “Heating Degree Days” for each State by the median “Heating Degree Days” for all States.

(iii) Divide the number of “Cooling Degree Days” for each State by the median “Cooling Degree Days” for all States, then multiply by 0.1.

(iv) Calculate the sum of the two numbers from paragraph (b)(3)(ii) and (iii) of this section.

(v) Divide the residential energy expenditures for each State by the number of households in the State.

(vi) Divide the sum of the residential energy expenditures for the States in each Census division by the sum of the households for the States in that division.

(vii) Divide the quotient from paragraph (b)(3)(v) of this section by the quotient from paragraph (b)(3)(vi) of this section.

(viii) Multiply the quotient from paragraph (b)(3)(vii) of this section for each State by the residential energy expenditures per low-income household for its respective Census division.

(ix) Divide the product from paragraph (b)(3)(viii) of this section for each State by the median of the products of all States.

(x) Multiply the results for paragraph (b)(3)(i), (iv) and (ix) of this section for each State.

(xi) Divide the product in paragraph (b)(3)(x) of this section for each State by the sum of the products in paragraph (b)(3)(x) of this section for all States.

(4) Calculate each State’s program allocation as follows:

(i) Multiply the remaining funds calculated in paragraph (b)(2) of this section by the formula share calculated in paragraph (b)(3)(xi) of this section,

(ii) Add the base allocation from paragraph (b)(1) of this section to the product of paragraph (b)(4)(i) of this section.

(c) Should total program allocations for any fiscal year fall below the total program allocations under Pub. L. 103–332, then each State’s program

allocation shall be reduced from its allocated amount under Pub. L. 103-332 by the same percentage as total program allocations for the fiscal year fall below the total program allocations under Pub. L. 103-332.

(d) All data sources used in the development of the formula are publicly available. The relevant data is available from the Bureau of the Census, the Department of Energy's Energy Information Administration and the National Oceanic and Atmospheric Administration.

(e) Should updates to the data used in the formula become available in any fiscal year, these changes would be implemented in the formula in the following program year.

(f) DOE may reduce the program allocation for a State by the amount DOE determines cannot be reasonably expended by a grantee to weatherize dwelling units during the budget period for which financial assistance is to be awarded. In reaching this determination, DOE will consider the amount of unexpended financial assistance currently available to a grantee under this part and the number of dwelling units which remains to be weatherized with the unexpended financial assistance.

(g) DOE may increase the program allocation of a State by the amount DOE determines the grantee can expend to weatherize additional dwelling units during the budget period for which financial assistance is to be awarded.

(h) The Support Office Director shall notify each State of the program allocation for which that State is eligible to apply.

4. Section 440.12 is amended by revising paragraph (b)(4) to read as follows:

**§ 440.12 State applications.**

\* \* \* \* \*

(b) \* \* \*

(4) The total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded—

(i) With financial assistance previously obligated under this part, and

(ii) With the program allocation to the State;

\* \* \* \* \*

5. Section 440.14 is amended by revising paragraph (b)(9)(vi) to read as follows:

**§ 440.14 State plans.**

\* \* \* \* \*

(b) \* \* \*

(9) \* \* \*

(vi) The amount of weatherization grant funds allocated to the State under this part;

\* \* \* \* \*

[FR Doc. 95-13437 Filed 6-2-95; 8:45 am]

BILLING CODE 6450-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 558**

**New Animal Drugs for Use in Animal Feeds; Lasalocid**

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for the use of 20 percent of lasalocid Type A medicated article in making Type C medicated feed used for chukar partridges as a coccidiostat.

**EFFECTIVE DATE:** June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1643.

**SUPPLEMENTARY INFORMATION:** Hoffmann-La Roche, Inc., Nutley, NJ 07110, is the sponsor of NADA 96-298, which currently provides for the use of a Type A medicated article HFV238 containing 20 percent (90.7 grams per pound (g/lb)) of lasalocid sodium activity in making 68- to 113-g per ton (g/t) Type C medicated feed for broiler or fryer chickens. The firm has filed a supplemental NADA that expands the use of the article to make a 113-g/t Type C medicated feed for chukar partridges for the prevention of coccidiosis caused by *Eimeria legionensis*. Approval is based in part on data and information in Public Master File (PMF) 5429 established under the Interregional Research Project No. 4 (IR-4), Northeastern Region, New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853-6401.

The supplemental NADA is approved as of April 19, 1995, and the regulations are amended in § 558.311 (21 CFR 558.311) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Additionally, in a final rule published in the **Federal Register** of August 6, 1990 (55 FR 31827), that amended the regulations in § 558.311(e)(1), the agency failed to also revise § 558.311(b)(6) to remove reference to entry (xiii) in the table in paragraph (e)(1). This document corrects that error.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.311 is amended in paragraph (b)(6) by removing "(e)(1)(xiii)," by adding new paragraph (b)(7), and in the table in paragraph (e)(1) by adding new entry "(xiii)" to read as follows:

**§ 558.311 Lasalocid.**

\* \* \* \* \*

(b) \* \* \*

(7) 20 percent activity to No. 000004 for use in chukar partridges as in paragraph (e)(1)(xiii) of this section.

\* \* \* \* \*

(e)(1) \* \* \*

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(xiii) 113 (0.0125 pct).	.....	Chukar partridges; for prevention of coccidiosis caused by <i>Eimeria leionensis</i> .	Feed continuously as sole ration up to 8 weeks of age.	000004

\* \* \* \* \*  
 Dated: May 24, 1995.

**Stephen F. Sundlof,**  
 Director, Center for Veterinary Medicine.  
 [FR Doc. 95-13636 Filed 6-2-95; 8:45 am]  
 BILLING CODE 4160-01-F

**Food and Drug Administration**

**21 CFR Part 558**

**New Animal Drugs for Use in Animal Feeds; Lasalocid**

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for the use of a 20-percent lasalocid Type A medicated article in making Type C medicated feed used for growing turkeys as a coccidiostat.

**EFFECTIVE DATE:** June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1643.

**SUPPLEMENTARY INFORMATION:** Hoffmann-La Roche, Inc., Nutley, NJ 07110, is the sponsor of NADA 96-298, which currently provides for the use of a Type A medicated article containing 20 percent (90.7 grams per pound (g/lb)) of lasalocid sodium activity in making a 68- to 113-g-per-ton (g/t) Type C medicated feed for broiler or fryer

chickens and chukar partridges. The firm has filed a supplemental NADA that expands the use of the article to making a 68- to 113-g/t Type C medicated feed for growing turkeys for the prevention of coccidiosis caused by *Eimeria meleagritidis*, *E. gallopavonis*, and *E. adenoeides*.

The supplemental NADA is approved as of April 28, 1995, and the regulations are amended in 21 CFR 558.311 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning April 28, 1995, because the supplemental application contains reports of new clinical or field investigations (other than bioequivalence or residue studies) essential to the approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to the described use of lasalocid sodium in growing turkeys for which the supplemental application was approved.

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.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.311 is amended in paragraph (b) by revising paragraph (b)(7) and in the table in paragraph (e)(1) by adding new entry "(xiv)" to read as follows:

**§ 558.311 Lasalocid.**

\* \* \* \* \*  
 (b) \* \* \*

(7) 20 percent activity to No. 000004 for use in chukar partridges as in paragraph (e)(1)(xiii) and for use in turkeys as in paragraph (e)(1)(xiv) of this section.

\* \* \* \* \*  
 (e)(1) \* \* \*

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(xiv) 68 (0.0075 pct) to 113 (0.0125 pct).	.....	Growing turkeys; for prevention of coccidiosis caused by <i>E. meleagritidis</i> , <i>E. gallopavonis</i> , and <i>E. adenoeides</i> .	Feed continuously as sole ration.	000004

\* \* \* \* \*

Dated: May 24, 1995.

**Stephen F. Sundlof,**  
 Director, Center for Veterinary Medicine.  
 [FR Doc. 95-13637 Filed 6-2-95; 8:45 am]  
 BILLING CODE 4160-01-F

**21 CFR Part 558**

**New Animal Drugs for Use in Animal Feeds; Nicarbazin and Bacitracin Methylene Disalicylate**

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to codify a previously approved new animal drug application (NADA) held by Merck Research Laboratories, Division of Merck & Co., Inc. The NADA provides for use of nicarbazin and bacitracin methylene disalicylate in Type C broiler feeds for prevention of certain forms of coccidiosis and for increased rate of weight gain and improved feed efficiency.

**EFFECTIVE DATE:** June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dianne T. McRae, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1623.

**SUPPLEMENTARY INFORMATION:** Merck Research Laboratories, Division of Merck & Co., Inc., P.O. Box 2000, Rahway, NJ 07065, is sponsor of NADA 98-378 which provides for the use of approved nicarbazin and bacitracin methylene disalicylate Type A medicated articles to make Type C medicated broiler feeds containing

113.5 grams per ton (g/t) nicarbazin with 30 g/t bacitracin methylene disalicylate. The NADA was approved by letter of March 15, 1955, for prevention of certain forms of coccidiosis and for increased rate of weight gain and improved feed efficiency. This document amends the regulations in 21 CFR 558.76(d) and in the table in 21 CFR 558.366(c) to reflect the approval.

Also, the table in § 558.366(c) contains two entries in the first column for "113.5 (0.0125 pct)." The second entry in the first column is unnecessary, and is being removed at this time. In addition, the entry for "113.5 (0.0125)" contains an outdated footnote to the approval for use of 113.5 g/t nicarbazin. Because the National Academy of Sciences/National Research Council (NAS/NRC) status was changed by enactment of the Generic Animal Drug and Patent Term Restoration Act of 1988, the footnote is hereby removed.

NADA 98-378 provides for use of nicarbazin and bacitracin methylene disalicylate Type A medicated articles to make Type C medicated feeds. Nicarbazin is a Category II drug which, as provided in 21 CFR 558.4, requires an approved Form FDA 1900 for making Type C medicated feeds. Therefore, use of nicarbazin Type A medicated articles in making Type C medicated feeds as in this NADA requires an approved Form FDA 1900.

Because this NADA was approved prior to July 1, 1975, the freedom of information (FOI) summary specified in 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii) is not required.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

**PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS**

1. The authority citation for 21 CFR part 558 continues to read as follows:

**Authority:** Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.76 is amended by adding paragraph (d)(3)(v) to read as follows:

**§ 558.76 Bacitracin methylene disalicylate.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(v) Nicarbazin as in § 558.366.

\* \* \* \* \*

3. Section 558.366 is amended in the table in paragraph (c) by removing footnote "1" for the entry "113.5 (0.0125 pct)," by removing the second entry "113.5 (0.0125 pct)," and by adding a new item before the entry for "Lincomycin 2 (0.00044 pct)," to read as follows:

**§ 558.366 Nicarbazin.**

\* \* \* \* \*

(c) \* \* \*

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
	Bacitracin methylene disalicylate 30	Broiler chickens; aid in preventing outbreaks of cecal ( <i>Eimeria tenella</i> ) and intestinal ( <i>E. acervulina</i> , <i>E. maxima</i> , <i>E. necatrix</i> , and <i>E. brunetti</i> ) coccidiosis; for increased rate of weight gain and improved feed efficiency.	.....do .....	000006
*	*	*	*	*

Dated: May 24, 1995.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 95-13635 Filed 6-2-95; 8:45 am]

BILLING CODE 4160-01-F

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[TX-10-1-7020; FRL-5214-8]

**Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to the State Implementation Plan (SIP) Addressing Visible Emissions**

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

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** The EPA published without prior proposal a **Federal Register** (FR) action approving a revision to the Texas SIP addressing visible emissions. The EPA's direct final approval was published on April 3, 1995 (60 FR 16806).

The EPA subsequently received adverse comments on the action. Accordingly, the EPA is withdrawing its direct final approval. All public comments received will be addressed in a subsequent final rule.

**EFFECTIVE DATE:** This withdrawal will be effective on June 2, 1995.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the addresses listed below. The interested persons wanting to examine these documents should make an appointment at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch (6T-A), USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7258.

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Therefore, the final rule appearing at 60 FR 16806, April 3, 1995, which was to become effective June 2, 1995, is withdrawn.

Dated: May 22, 1995.

**A. Stanley Meiburg,**

*Acting Regional Administrator.*

[FR Doc. 95-13746 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 63**

[AD-FRL-5209-8]

RIN 2060-AC31

**National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning; Correction**

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

**ACTION:** Corrections to final regulation.

**SUMMARY:** This action corrects errors and clarifies regulatory text in the final rule published on December 2, 1994 at 59 FR 61801.

**EFFECTIVE DATE:** These corrections become effective June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Paul Almodóvar, Coatings and Consumer Products Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-0283.

**SUPPLEMENTARY INFORMATION:** On December 2, 1994 (59 FR 61801), the Environmental Protection Agency (EPA) promulgated in the **Federal Register** national emission standards for hazardous air pollutants for halogenated solvent cleaning. These standards were promulgated as subpart T in 40 CFR part 63. This document contains corrections to editorial and cross-referencing errors in the final standards. In addition, there are corrections to clarify the applicability of the final rule, and to clarify several definitions.

Paragraph (a) of § 63.460 is revised to reflect the intent of the final rule by clarifying that wipe cleaning activities, such as cleaning using a rag containing halogenated solvent or a spray cleaner containing halogenated solvent are not covered under the scope of this regulation.

Paragraph (d) of § 63.460 and the definition of an existing source under § 63.461 are being revised to clarify that any machine, the construction or reconstruction of which was commenced on or before November 29, 1993, that did not meet the definition of

a solvent cleaning machine on December 2, 1994, because it did not, on that date, use halogenated hazardous air pollutant solvent liquid or vapor covered under this subpart to remove soils, becomes an existing source when it commences to use such liquid or vapor. The Agency intended machines that use halogenated hazardous air pollutant solvent liquid or vapor covered under this subpart to be subject to the regulation regardless of when they commenced such use. This correction clarifies an oversight in the drafting of the final rule. In addition, an existing solvent cleaning machine moved within a contiguous facility or to another facility under the same ownership continues to be regulated as an existing machine.

The definition of a batch cleaning machine under § 63.461 is being revised to clarify that cross-rod degreasers are considered batch cleaning machines. A definition of a cross-rod solvent cleaning machine is being added to the final rule.

The definition of a solvent cleaning machine under § 63.461 is being revised to clarify that small buckets, pails, and beakers with capacities of 7.6 liters (2 gallons) or less are not considered solvent cleaning machines for the purpose of this subpart. The Agency did not intend to regulate these small pieces of equipment not specifically designed to carry out cleaning or drying operations using one of the covered halogenated solvents. The size limit is included to ensure that larger vessels not specifically designed to carry out cleaning or drying operations remain subject to this final rule.

Paragraph (e)(2)(i) of § 63.463 is being revised to correct the proper units of measurement for the chilled air blanket temperature that the freeboard refrigeration device shall at least maintain. The chilled air blanket temperature shall be measured in °F, instead of °F or °C.

Paragraph (a)(4) of § 63.468 is being revised to correct an editorial error in order to clarify the intent of the provisions.

Paragraph (j) of § 63.468 is being revised to correct language on the part 70 permitting requirements for area source batch vapor and in-line solvent cleaning machines to clarify the intent of the provisions.

The headings for appendix B and appendix C are being revised for editorial errors in order to clarify the intent of the provisions.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous

substances, Halogenated solvent cleaning machines, Reporting and recordkeeping requirements.

Dated: May 10, 1995.

**Mary D. Nichols,**

*Assistant Administrator for Air and Radiation.*

For reasons set out in the preamble, title 40, chapter I, part 63, subpart T of the Code of Federal Regulations is corrected as follows:

#### **PART 63—[CORRECTED]**

1. On page 61805, in the third column, 4 lines from the bottom, § 63.460(a) is corrected to add the following: "Wipe cleaning activities, such as using a rag containing halogenated solvent or a spray cleaner containing halogenated solvent are not covered under the provisions of this subpart."

2. On page 61806, first column, starting on line 18 from the top, § 63.460(d) is corrected by adding the following sentence to the end of the paragraph "Except that, any machine that commences construction or reconstruction on or before November 29, 1993, that does not use halogenated hazardous air pollutant (HAP) solvent on December 2, 1994 shall, if the machine begins use of halogenated HAP solvent after December 2, 1994, achieve compliance with the provisions of this subpart no later than December 2, 1997 or 60 days after commencing use of halogenated HAP solvent covered under this subpart whichever is later."

3. On page 61806, first column, starting 7 lines from the bottom, the definition of "batch cleaning machine" under § 63.461 is corrected by revising the last sentence to read as follows: "A solvent cleaning machine, such as a ferris wheel or a cross-rod degreaser, that clean multiple batch loads simultaneously and are manually loaded are batch cleaning machines."

4. On page 61806, second column, starting on the last line of the column, the definition of "existing" in § 63.461 is corrected to add the following sentence to the end of the definition: "A machine, the construction or reconstruction of which was commenced on or before November 29, 1993, but that did not meet the definition of a solvent cleaning machine on December 2, 1994 because it did not use halogenated HAP solvent liquid or vapor covered under this subpart to remove soils, becomes an existing source when it commences to use such liquid or vapor. A solvent cleaning machine moved within a contiguous facility or to another facility under the

same ownership, constitutes an existing machine."

5. On page 61806, second column, immediately following the definition of "cover" in § 63.461, the following definition of "cross-rod solvent cleaning machine" is added: "*Cross-rod solvent cleaning machine* means a batch solvent cleaning machine in which parts baskets are suspended from 'cross-rods' as they are moved through the machine. In a cross-rod cleaning machine, parts are loaded semi-continuously, and enter and exit the machine from a single portal."

6. On page 61807, second column, starting on line 40 from the top, the definition of "solvent cleaning machine" under § 63.461 is corrected to add the following sentence to the end of the definition: "Buckets, pails, and beakers with capacities of 7.6 liters (2 gallons) or less are not considered solvent cleaning machines."

7. On page 61808, in the first column, starting on line 26 from the top, § 63.462(d) is corrected to read as follows: "Each owner or operator of a batch cold cleaning machine shall submit an initial notification report as described in § 63.468 (a) and (b) and a compliance report as described in § 63.468(c)."

8. On page 61810, first column, starting on the last two lines, § 63.463(e)(2)(i) is corrected to read as follows: "If a freeboard refrigeration device is used to comply with these standards, the owner or operator shall ensure that the chilled air blanket temperature (in °F), measured at the center of the air blanket, is no greater than 30 percent of the solvent's boiling point."

9. On page 61814, third column, starting on line 24 from the top, § 63.468(a)(4) is corrected to read as follows: "The date of installation for each solvent cleaning machine or a letter certifying that the solvent cleaning machine was installed prior to, or after, November 29, 1993."

10. On page 61816, second column, starting on line 3 from the top § 63.468(j) is corrected to read as follows: "The Administrator has determined, pursuant to the criteria under section 502(a) of the Act, that an owner or operator of any batch cold solvent cleaning machine that is not itself a major source and that is not located at a major source, as defined under 40 CFR 70.2, is exempt from part 70 permitting requirements for that source.

An owner or operator of any other solvent cleaning machine subject to the provisions of this subpart is subject to part 70 permitting requirements, such

sources, if not major or located at major sources, may be deferred by the State from part 70 permitting requirements for 5 years after the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit permit applications within 12 months of such date (by December 9, 2000)."

11. On page 61818, in the first column, on the first line, amendment "4." is corrected to read as follows: "4. Appendix A to subpart T is added to read as follows:" Also, on the next line, the words "Appendix B" are corrected to read "Appendix A to Subpart T".

12. On page 61818, in the third column, on the last two lines, amendment "5." is corrected to read as follows: "5. Appendix B to Subpart T is added to read as follows:" Also, on the next line, the words "Appendix C" are corrected to read "Appendix B to Subpart T".

[FR Doc. 95-12769 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-M

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 43**

[CC Docket No. 92-296; FCC 95-181]

#### **Simplification of the Depreciation Process**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission is adopting ranges for the underlying factors that are used to compute depreciation rates for the local exchange carriers (LECs) regulated under the price cap incentive regulatory plan. Under new procedures, LECs may make streamlined filings for changes in depreciation rates, if their underlying depreciation factors fall within the prescribed ranges. The Commission implemented the streamlined procedures in two phases. The Second Report and Order (released June 28, 1994) adopted underlying factor ranges for 22 of the 34 depreciation rate categories. This Third Report and Order adopts ranges and alternate simplified procedures for the remaining 12 accounts and completes the implementation process. The rule change will lessen the depreciation prescription burden on price caps LECs in light of regulatory and market changes without sacrificing protection for consumers.

**EFFECTIVE DATE:** July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Fatina K. Franklin (202-418-0859) or John Hays (202-418-0875), Common Carrier Bureau, Accounting and Audits Division.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Report and Order in the Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, FCC 95-181, adopted May 2, 1995 and released May 4, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, International Transcription Services, room 246, 1919 M Street, NW., Washington, DC 20554 (202-857-3800).

#### Paperwork Reduction Act

The Federal Communications Commission has submitted the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3225, New Executive Office Building, Washington, DC 20503, (202) 395-3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418-0214.

**Please note:** The Commission has requested expedited review of this collection by June 23, 1995, under the provisions of 5 C.F.R. Section 1320.18.

*Title:* Section 43.43—Report of Proposed Changes in Depreciation Rates

*OMB Control No.:* 3060-0168

*Action:* Revised collection

*Respondents:* Businesses or other for-profit entities

*Frequency of response:* On occasion; Triennially; Annually

*Estimated Annual Burden:* 12 responses; 5625 hours per response; 67,500 hours total

*Needs and Uses:* In the Report and Order in CC Docket No. 92-296 (released 10/20/93), the Commission streamlined its depreciation prescription process for local exchange carriers (LECs) regulated under its price cap regulatory scheme by adopting a modified form of the basic factor range option. The Second Report and Order (released 6/28/94) adopted the initial set of accounts and ranges for the price caps LECs. The Third Report and Order adopts ranges and alternate simplified procedures

for the remaining accounts and completes the implementation process. The Commission has modified its information collection requirements whereby large LECs must submit analyses on proposed changes in depreciation rates. The changes should reduce by 43.75% the amount of time needed to prepare and review these analyses. The information will be used by the Commission staff to establish proper depreciation rates to be charged by the carriers pursuant to Section 220(b) of the Communications Act, as amended. 47 U.S.C. 220(b).

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Records Management Branch, Paperwork Reduction Project (3060-0168), Washington, DC 20554 and to the Office of Management and Budget, Washington, DC 20503.

*Summary:* 1. On September 23, 1993, we adopted streamlined depreciation prescription procedures for the local exchange carriers ("LECs") regulated under our price cap incentive regulatory plan.<sup>1</sup> These procedures require us to establish ranges for the underlying factors that are used to compute depreciation rates for plant categories. The new procedures generally will permit carriers to make streamlined filings for changes in depreciation rates for these categories, as long as their underlying factors fall within the prescribed ranges. By adopting these streamlined procedures, we hoped to simplify the depreciation process, achieve administrative savings, and allow the LECs greater flexibility<sup>2</sup> in the depreciation process, while remaining consistent with the public interest.

2. We further concluded that the streamlined procedures should be implemented as soon as practicable, beginning with the plant accounts most readily adaptable to the range approach. To that end, we decided to implement the new procedures in two phases. In

<sup>1</sup> Simplification of the Depreciation Prescription Process, Report and Order, 58 FR 58788 (1993) (Depreciation Simplification Order).

<sup>2</sup> Flexibility allows a LEC to select, within established ranges, the life and salvage factors it uses in prescribed depreciation rates without undergoing the expense of submitting studies to justify its specification of those factors. In addition, under the new procedures, the LECs can change their basic factors annually, as opposed to the current triennial prescription cycle.

the Second Report and Order (released 6/28/94), we completed phase one of the streamlining process and adopted ranges for 22 plant categories.<sup>3</sup>

3. On October 7, 1994, we adopted a Further Order Inviting Comment<sup>4</sup> proposing streamlined procedures for the remaining 12 plant categories. The FOIC sought comments on the proposed projection life and future net salvage ranges proposed by the Bureau for eight of these categories and alternate simplified procedures for the remaining four categories.

4. In response to the FOIC, the United States Telephone Association (USTA) and most of the LEC commenters urge the Commission to adopt the ranges so that the LECs can use them during the 1995 depreciation prescription process. These commenters, however, give limited support to the ranges as proposed in the FOIC. They state that those ranges are based on "historical" data that are not forward looking. In addition, they argue that the proposed projection life ranges encompass useful lives that are too long.

5. The General Services Administration (GSA), MCI Telecommunications Corporation (MCI), and the National Association of Regulatory Utility Commissioners (NARUC) support the ranges proposed in the FOIC. They state that the methodology the Commission used to determine the ranges is sound and that the ranges are reasonable and should be adopted without modification. MCI and NARUC further state that the proposed ranges appear to provide flexibility to a majority of the LECs, but are not so broad as to be meaningless.

6. On the other hand, the Idaho Public Utilities Commission (Idaho Commission) and the Missouri Public Service Commission (Missouri Commission) contend that the ranges are based on inadequate data. They state that, while the data are useful for determining the depreciation factors for a specific company, they are not adequate to establish industry-wide ranges. The Missouri Commission and the Idaho Commission indicate that the proposed ranges are too wide and that the ranges could substantially increase the carriers' depreciation expense. The Missouri Commission indicates that these ranges would give the price cap LECs discretion over approximately \$1 billion in depreciation expense. In addition, the Missouri Commission

<sup>3</sup> Simplification of the Depreciation Prescription Process, Second Report and Order, 59 FR 35632 (1994) (Second Report and Order).

<sup>4</sup> Simplification of the Depreciation Prescription Process, Order Inviting Comments, 58 FR 62083 (1993) (OIC).

contends that the ranges' width should vary inversely with the size of the account so that the potential depreciation change would equal some "target discretion value." Thus, according to the Missouri Commission, accounts with large balances should have relatively small ranges and accounts with small balances should have relatively large ranges.

7. In the Depreciation Simplification Order, we set forth the specific methodology that should be used to establish the projection life and future net salvage ranges. We have already used that methodology in establishing ranges for 22 depreciation rate categories in our Second Report and Order. In this Order, we are again using that methodology to set ranges for eight additional plant categories. This methodology requires that we consider certain specifically enumerated data. To apply it for each account and for each of the two basic factors, we first developed a range of one standard deviation around the mean of the basic factors underlying the currently prescribed depreciation rates for each of the LECs. From that point, we determined whether there were technological trends or changing carrier plans that might not be fully reflected in some of the LECs' prescribed factors. We then considered the number of LECs with basic factors that fall within the initial ranges and altered the ranges where appropriate. We recognized, however, that these specifically enumerated data must be considered in light of our obligation to prescribe reasonable depreciation rates. Thus, in developing the proposed ranges, we considered both the specific data enumerated in the Depreciation Simplification Order and our overriding responsibility to prescribe reasonable depreciation rates.

8. After reviewing the comments, we have decided to adopt the ranges proposed in the FOIC. (See Appendix). As indicated above, these ranges are based on statistical studies of the most recently prescribed factors. These statistical studies required detailed analyses of each carrier's most recent plant retirement patterns, the carriers' plans, and the current technological developments and trends. Because the proposed ranges reflect these data, we do not believe that the ranges are too high, too low, or not accurate as several commenters contend. Moreover, the ranges are not so broad as to be considered meaningless by including all prescribed factors.

9. As we stated in the Second Report and Order, our objective in this rulemaking is to streamline the process

used by the Commission to prescribe depreciation rates, not to change those rates. We believe that the ranges adopted in this Order, and in the Second Report and Order, provide a reasonable degree of confidence that the basic factors falling within their bounds will produce depreciation rates accurately reflecting plant retirements, company plans, and technological trends. On the other hand, they allow the LECs sufficient flexibility in the selection of the final factors. Consequently, we have decided not to deviate from any of the proposed ranges at this time. We believe that some experience with the ranges should be developed before we consider modifying them. As suggested by most of the commenters, this will also allow us to establish the ranges as quickly as possible so that the LECs can use them during the 1995 reclassification process. If changing conditions require revisions in the ranges, we can modify them during our three-year range review.

10. In the FOIC, we did not propose ranges for Account 2211, Analog Electronic Switching; Account 2215, Electro-mechanical Switching; and Account 2431, Aerial Wire.<sup>5</sup> We stated that the LECs are rapidly phasing out the obsolete equipment recorded in these "dying accounts"<sup>6</sup> and replacing it with equipment based on newer technologies. We proposed to calculate the depreciation rates for these accounts from specific plant retirement schedules that the LECs have developed based on company plans to modernize their networks. We stated that these rates would be more accurate and easier to calculate than rates based on national averages that require detailed statistical analyses of forecasted basic factors.

11. In addition, we did not propose a range for Account 2121, Buildings.<sup>7</sup> We stated that, for depreciation study purposes, we had permitted the LECs great flexibility in subdividing this account and estimating lives for each subcategory. We also stated that, because of the significant differences among the categorization methods, the LECs' current basic factors for the subaccounts could not be used to establish nationwide ranges. In the FOIC, we proposed to maintain the basic factors underlying the currently prescribed depreciation rates for the buildings account, until our three-year range review when we will reconsider whether ranges would be appropriate

<sup>5</sup> 47 CFR 32.2211, 32.2115, 32.2431.

<sup>6</sup> "Dying accounts" are asset accounts in which little or no new investment is being made, and for which substantial retirements are impending.

<sup>7</sup> 47 CFR 32.2121.

for this account. In the interim, we proposed to require that the price cap LECs submit the same data for the buildings account that would be required under our streamlined study procedures.<sup>8</sup>

12. The parties commenting on these matters support our proposals. MCI, the Southwestern Bell Telephone Company (Southwestern), and USTA indicate that there is no need to establish ranges for "dying accounts." NARUC agrees that our proposed method for determining the rates for the three "dying accounts" would be more accurate than rates based on national averages. NARUC maintains that these rates can be readily calculated using individual company retirement schedules without the need for statistical analyses to forecast lives. The commenters also concur with our proposed treatment of the buildings account.

13. We conclude that the public interest would be best served by adopting the alternate streamlined procedures for these accounts proposed in the FOIC. We find that the cost of establishing and administering ranges for these accounts would outweigh the benefits. As we stated in the FOIC, depreciation rates on obsolete equipment recorded in "dying accounts" can be readily calculated from retirement schedules using a methodology less complicated than the range approach. Moreover, to establish ranges for the buildings account would require that the LECs' present data be recast into new, uniform subcategories. The LECs have indicated that the cost of compiling the information necessary to develop new subcategories would be substantial.<sup>9</sup>

14. Furthermore, we find that the depreciation rates calculated for these accounts using our alternate streamlined procedures will be more accurate than depreciation rates based on the range approach. For the "dying accounts," the rates will reflect company-specific retirement schedules rather than national averages of the underlying basic factors. For the building account, we believe the present rates will reflect company operations over the next few years. The LECs do not have plans to add or retire a significant number of buildings during that period. As a result, the underlying depreciation

<sup>8</sup> Depreciation Rates Branch, The Federal Communications Commission, The Federal Communications Commission Depreciation Study Guide \$I (1995) describes these streamlined study procedures.

<sup>9</sup> See Letter from Thomas R. Whittaker, Chairman, United States Telephone Association Ad Hoc Depreciation Committee, to Ms. Fatima Franklin, Chief, Depreciation Rates Branch (June 21, 1994).

factors applicable to Account 2121 likely will not change, and an extensive analysis of the buildings account probably will not be necessary within the next few years. In the interim, we believe that the data required under the streamlined study procedures will be adequate, and will allow price cap LECs to submit only these data for the buildings account.

15. Under our depreciation prescription process, one-third of the carriers for which we prescribe rates have their rates reviewed each year. LECs scheduled for review in 1996 and 1997 may file for changes in their

depreciation rates in 1995 as long as they use basic factors within the ranges we have selected and ranges chosen are consistent with their operations. These carriers must file these depreciation rate changes by July 1, 1995.

**Ordering Clauses**

16. Accordingly, it is ordered, pursuant to Section 4(i), 201-205 and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201-205 and 220(b), that the ranges for the future net salvage and the projection life factors for the accounts listed in the Appendix are Hereby Adopted as specified in the Appendix.

17. It is Further Ordered, that this order is effective thirty days after publication in the **Federal Register**.

18. It is Further Ordered, that carriers may use the ranges established herein for federal filing purposes prior to the effective date of this order.

**List of Subjects in 47 CFR Part 43**

Communication common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**LaVera F. Marshall,**  
*Acting Secretary.*

APPENDIX.—ACCOUNTS AND RANGES

Account No.	Account Name	Depreciation rate category	Projection life range (years)		Future net salvage range (percent)	
			Low	High	Low	High
2220 .....	Digital switching .....	Digital switching .....	16	18	0	5
2220 .....	Operator systems .....	Combined .....	8	12	0	5
2232 .....	Circuit equipment .....	Digital .....	11	13	0	5
2411 .....	Poles .....	Poles .....	25	35	-75	-50
2421 .....	Aerial cable .....	Metallic .....	20	26	-35	-10
2423 .....	Buried cable .....	Metallic .....	20	26	-10	0
2426 .....	Intrabuilding network cable .....	Metallic .....	20	25	-30	-5
2426 .....	Intrabuilding network cable .....	Non-metallic .....	25	30	-15	0

[FR Doc. 95-13565 Filed 6-1-95; 8:45 am]  
BILLING CODE 6712-01-M

**47 CFR Part 61**

[CC Docket No. 94-97, Phase I, FCC No. 95-200]

**Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport**

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** In this Order, the Commission concludes that most of the local exchange carriers failed to demonstrate that the overhead loading levels established in their virtual collocation tariffs are just and reasonable. The Commission, therefore, finds these rates to be unlawful. In order to facilitate efficient entry into the interstate access service market, the Commission prescribes the maximum permissible overhead loading levels for virtual collocation rates. The intended effect of this action is to foster increased competition in the interstate access service market and to benefit consumers through increased efficiency, broader

access to services, reduced rates, and more rapid deployment of new technologies.

**EFFECTIVE DATE:** July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Amy Glatter or Mika Savir, (202) 418-1530.

**SUPPLEMENTARY INFORMATION:** On May 11, 1995, the Commission adopted and released a Report and Order in CC Docket No. 94-97, Phase I, after reviewing local exchange carriers' (LECs') direct cases, opposition, and rebuttals in the matter of LECs' Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport. The Commission concluded that most LECs have not justified their proposed overhead loadings, and that these LECs' rates for virtual collocation service are therefore unlawful.

In order to advance the competitive goals of this Commission's new mandatory collocation policy, we prescribed in this Order the maximum permissible overhead loading levels for these LECs' virtual collocations rates.

We prescribed on a permanent basis the maximum permissible overhead loading levels for virtual collocation rates filed by Bell Atlantic Telephone Companies, BellSouth

Telecommunications, Inc., GTE System Telephone Companies and GTE Telephone Operating Companies, United and Central Telephone Companies, and US West Communications, Inc. In addition, we prescribed on an interim basis the maximum permissible overhead loading levels for Southwestern Bell pending resolution of the carrier's request for confidential treatment of its cost support data. At the completion of our investigation, we will prescribe on a permanent basis just and reasonable overhead loading levels for SWB.

Finally, we affirmed on an interim basis the Common Carrier Bureau's earlier conclusion that the overhead loading levels of Ameritech Operating Companies and Cincinnati Bell Telephone Companies appear to comport with the Commission's overhead loading standard, pending resolution of these carrier's request for confidential treatment of their direct case cost support data.

The full text of this item is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from

the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

#### List of Subjects of 47 CFR Part 61

Communications common carriers, Report and recordkeeping requirements.

Federal Communications Commission.

**LaVera F. Marshall,**

*Acting Secretary.*

[FR Doc. 95-13641 Filed 6-2-95; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 64

[CC Docket No. 91-281, FCC 95-187]

#### Calling Number Identification Service—Caller ID

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** On May 5, 1995, the Commission adopted an Order on Reconsideration (Reconsideration) and a Second Report and Order (Second R&O). Pursuant to the Reconsideration and Second R&O (collectively called Order), this document amends rules regarding the federal model for Caller ID. This action fosters development of new technologies while at the same time protecting privacy expectations of people making and receiving calls.

**EFFECTIVE DATE:** Sections 64.1600 and 64.1602 are effective April 12, 1995. Sections 64.1601 and 64.1603 are effective December 1, 1995, except Sections 64.1601 and 64.1603 do not apply to public payphones and partylines until January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Marian Gordon (202/634-4215) or Mike Specht (202/634-1816), Domestic Facilities Division, Common Carrier Bureau.

**SUPPLEMENTARY INFORMATION:** This summarizes the Commission's Reconsideration and Second R&O in the matter of Rules and Policies Regarding Calling Number Identification Service—Caller ID, (CC Docket 91-281, adopted May 4, 1995, and released May 5, 1995). The file is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., NW., Washington DC, or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 2100 M St., NW., Suite 140, Washington, DC 20037, phone (202/857-3800).

#### Analysis of Proceeding

On October 23, 1991, the Commission issued a Notice of Proposed Rulemaking (NPRM), summarized at 59 FR 18318 (April 18, 1994), seeking to develop effective policies to govern interstate calling party number (CPN) based services such as Caller ID. CPN based services are services depending on capabilities that are possible with new, out-of-band signalling techniques, the most recent being Signalling System Seven (SS7). The Commission found that as interexchange and local exchange carriers deploy SS7 and interconnect their signalling networks, interstate CPN-based services become possible. The Commission tentatively concluded that these new interstate services (the most widely known is Caller ID) would serve the public interest, but that federal policies had to be established to resolve uncertainties that appeared to be impeding their development. In particular, it identified billing issues among different carriers involved in passing CPN and varying state policies on the privacy rights of the parties on interstate calls as needing clarification.

On March 29, 1994, the Commission affirmed its tentative conclusion that interstate passage of CPN is in the public interest because, consistent with the statutory intent underlying Sections 1 and 7 of the Communications Act, it makes many new services and efficiencies possible. The Commission adopted a federal model to govern interstate transport and delivery of CPN, based largely on the proposals in the NPRM. The federal model included the following principles: (1) When a carrier uses SS7 to set up a call, it must transmit CPN and its associated privacy indicator for that call to connecting carriers; (2) calling parties should be able to conceal their number on an interstate call by dialing \*67, and know that if they do not dial \*67 their number may be revealed; (3) carriers in the transmission chain must honor the calling party's privacy election; (4) carriers may not charge connecting carriers for passage of CPN because its incremental costs are *de minimis*; (5) carriers may not charge calling parties for providing them the ability to conceal CPN by using \*67, and must educate subscribers how to maintain confidentiality; (6) customers of charge number services such as 800 generally may not reuse charge number information without the permission of the calling party (charge number in SS7 technology is equivalent to Automatic Number Identification (ANI) that identifies a calling number in the older

multifrequency signalling technology); and (7) states are preempted from having policies that interfere with the federal policy.

In addition to articulating the principles that govern the federal caller ID model, the Commission sought further comment on whether it should prescribe precise requirements regarding exactly how carriers should educate consumers about maintaining privacy on CPN services and whether and how the policies it adopted should be extended to other identification services, such as calling party name. On March 17, 1995, the Commission stayed the effective date of Sections 1601 (CPN passage and privacy) and 1603 (education) of the rules.

In the order adopted May 4, 1994, the Commission considered petitions for reconsideration of its decision, addressed comments filed in response to the Further Notice of Proposed Rulemaking and issued a Third Notice of Proposed Rulemaking to resolve issues raised by Private Branch Exchange (PBX) telephone services and private payphones in connection with CPN. The order affirms the Commission's fundamental finding that federal policies to govern the passage of Calling Party Number (CPN) over interstate facilities are necessary because uncertainty created by their absence impedes the development of potentially valuable CPN based interstate services. The order also resolves areas of uncertainty identified on reconsideration, including financial issues involving interstate passage of CPN and varying state requirements concerning the privacy rights of calling and called parties on interstate calls. It addresses comments filed in response to the Further Notice concerning application of federal Caller ID rules to other CPN based services and Commission prescribed educational requirements to support consumer use of Caller ID services. Finally, the Third Notice of Proposed Rulemaking seeks comment on a reasonable timeframe for bringing PBX systems and private payphones into compliance with our rules.

#### Final Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, the Commission's final analysis in this Order on Reconsideration and Second Report and Order is as follows:

##### *I. Need and Purpose of This Action*

This Order on Reconsideration and Second Report and Order amends the Commission's rules to require that the privacy requests of calling parties are

honored. The rule amendments are intended to ensure that caller ID services are available, to the extent possible and in the most efficient manner, to persons in the United States.

## II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

No comments were submitted in direct response to the Regulatory Flexibility Analysis in the Report and Order and Request for Comments.

## III. Significant Alternatives Considered

The Report and Order and Request for Comments in this proceeding offered several proposals and requested comments as well as the views of commenters on other possibilities. The Commission has considered all comments and has adopted most of its proposals in addition to some alternatives recommended by commenters. The Commission considers its Order on Reconsideration and Second Report and Order that define a federal caller ID model to be the most reasonable course of action.

### Ordering Clauses

1. Accordingly, It is Ordered, That, pursuant to authority contained in Sections 1, 4(i), 4(j), 201-205 and 218 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201-205, and 218, Part 64 of the Commission's Rules and Regulations is amended as set forth below, effective December 1, 1995.

2. The petitions for reconsideration and clarification of caller ID rules are granted in part and denied in part.

### List of Subjects in 47 CFR Part 64

Calling party telephone number and privacy, Communications common carriers.

Federal Communications Commission.

**LaVera F. Marshall,**

*Acting Secretary.*

### Rule Changes

Part 64 of chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

**Authority:** Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 226, 227, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201-4, 218, 225, 226, 227, unless otherwise noted.

2. Section 64.1600 is revised to read as follows:

### § 64.1600 Definitions.

(a) *Aggregate information.* The term "aggregate information" means collective data that relate to a group or category of services or customers, from which individual customer identities or characteristics have been removed.

(b) *ANI.* The term "ANI" (automatic number identification) refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(c) *Calling party number.* The term Calling Party Number refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network.

(d) *Charge number.* The term "charge number" refers to the delivery of the calling party's billing number in a Signaling System 7 environment by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users.

(e) *Privacy indicator.* The term Privacy Indicator refers to information, contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network, that indicates whether the calling party authorizes presentation of the calling party number to the called party.

(f) *Signaling System 7.* The term Signaling System 7 (SS7) refers to a carrier to carrier out-of-band signaling network used for call routing, billing and management.

3. Section 64.1601 is revised to read as follows:

### § 64.1601 Delivery requirements and privacy restrictions.

(a) *Delivery.* Common carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 call set functionality are required to transmit the calling party number associated with an interstate call to interconnecting carriers.

(b) *Privacy.* Originating carriers using Signaling System 7 and offering or subscribing to any service based on Signaling System 7 call set up functionality will recognize \*67 dialed as the first three digits of a call (or 1167 for rotary or pulse-dialing phones) as a caller's request for privacy on an interstate call. Such carriers providing line blocking services will recognize \*82 as a caller's request that privacy not be

provided on an interstate call. No common carrier subscribing to or offering any service that delivers calling party number may override the privacy indicator associated with an interstate call. Carriers must arrange their CPN-based services in such a manner that when a caller requests privacy, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party. The terminating carrier must act in accordance with the privacy indicator unless the call is made to a called party that subscribes to an ANI or charge number based service and the call is paid for by the called party.

(c) *Charges.* No common carrier subscribing to or offering any service that delivers calling party number may

(1) Impose on the calling party charges associated with per call blocking of the calling party's telephone number, or

(2) Impose charges upon connecting carriers for the delivery of the calling party number parameter or its associated privacy indicator.

(d) *Exemptions.* § 64.1601 shall not apply to calling party number delivery services

(1) Used solely in connection with calls within the same limited system, including (but not limited to) a Centrex, virtual private network, or private branch exchange system;

(2) Used on a public agency's emergency telephone line or in conjunction with 911 emergency services, or on any entity's emergency assistance poison control telephone line;

(3) Provided in connection with legally authorized call tracing or trapping procedures specifically requested by a law enforcement agency.

4. Section 64.1602 is revised to read as follows:

### § 64.1602 Restrictions on use and sale of telephone subscriber information provided pursuant to automatic number identification or charge number services.

(a) Any common carrier providing Automatic Number Identification or charge number services on interstate calls to any person shall provide such services under a contract or tariff containing telephone subscriber information requirements that comply with this subpart. Such requirements shall:

(1) Permit such person to use the telephone number and billing information for billing and collection, routing, screening, and completion of the originating telephone subscriber's call or transaction, or for services

directly related to the originating telephone subscriber's call or transaction;

(2) Prohibit such person from reusing or selling the telephone number or billing information without first

(i) Notifying the originating telephone subscriber and,

(ii) Obtaining the affirmative consent of such subscriber for such reuse or sale; and,

(3) Prohibit such person from disclosing, except as permitted by paragraphs (a) (1) and (2) of this section, any information derived from the automatic number identification or charge number service for any purpose other than

(i) Performing the services or transactions that are the subject of the originating telephone subscriber's call,

(ii) Ensuring network performance security, and the effectiveness of call delivery,

(iii) Compiling, using, and disclosing aggregate information, and

(iv) Complying with applicable law or legal process.

(b) The requirements imposed under paragraph (a) of the section shall not prevent a person to whom automatic number identification or charge number services are provided from using

(1) The telephone number and billing information provided pursuant to such service, and

(2) Any information derived from the automatic number identification or charge number service, or from the analysis of the characteristics of a telecommunications transmission, to offer a product or service that is directly related to the products or services previously acquired by that customer from such person. Use of such information is subject to the requirements of 47 CFR 64.1200 and 64.1504(c).

5. Section 64.1603 is revised to read as follows:

**§ 64.1603 Customer notification.**

Any common carrier participating in the offering of services providing calling party number, ANI, or charge number on interstate calls must notify its subscribers, individually or in conjunction with other carriers, that their telephone numbers may be identified to a called party. Such notification must be made not later than December 1, 1995, and at such times thereafter as to ensure notice to subscribers. The notification must be effective in informing subscribers how to maintain privacy by dialing \*67 (or 1167 for rotary or pulse-dialing phones) on interstate calls. The notice shall inform subscribers whether dialing \*82

(or 1182 for rotary or pulse-dialing phones) on interstate calls is necessary to present calling party number to called parties. For ANI or charge number services for which such privacy is not provided, the notification shall inform subscribers of the restrictions on the reuse or sale of subscriber information.

6. Section 64.1604 is revised to read as follows:

**§ 64.1604 Effective date**

The provisions of §§ 64.1600 and 64.1602 are effective April 12, 1995. The provisions of §§ 64.1601 and 64.1603 are effective December 1, 1995, except §§ 64.1601 and 64.1603 do not apply to public payphones and partylines until January 1, 1997.

[FR Doc. 95-13760 Filed 6-2-95; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 94-146; RM-8557]

**Radio Broadcasting Services; Houston, AK**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 242A to Houston, Alaska, as that community's third local FM service, in response to a petition for rule making filed on behalf of Evangelistic Alaska Missionary Fellowship, Inc. See 59 FR 66287, December 23, 1994. Coordinates used for Channel 242A at Houston are 61-38-01 and 149-50-28. With this action, the proceeding is terminated.

**DATES:** Effective July 17, 1995. The window period for filing applications on Channel 242A at Houston, Alaska, will open on July 17, 1995, and close on August 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 242A at Houston, Alaska, should be addressed to the Audio Services Division, FM Branch, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94-146, adopted May 23, 1995, and released May 31, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy

contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by adding Channel 242A at Houston.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 95-13640 Filed 6-2-95; 8:45 am]

BILLING CODE 6712-01-F

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 202, 203, 206, 207, 209, 215, 217, 219, 225, 226, 228, 231, 232, 235, 237, 242, 244, 245, 247, 249, 251, 252, 253, and Appendix C to Chapter 2**

[Defense Acquisition Circular (DAC) 91-7]

**Defense Federal Acquisition Regulation Supplement; Miscellaneous Amendments**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rules.

**SUMMARY:** Defense Acquisition Circular (DAC) 91-7 amends the Defense FAR Supplement (DFARS) to revise, finalize, or add language on competitive prototyping, contractor accounting controls, award to foreign controlled contractors, terrorist countries, debarment and suspension, small purchases in support of contingency operations, greatest value sources, predetermined indirect cost rates, undefinitized contract actions, small disadvantaged business, historically black colleges and universities and minority institutions, Indian tribal or Alaska native corporations, North American Free Trade Agreement, valves and machine tools, restriction on procurement of goods, aircraft fuel cells, lifeboat survival systems, performance outside the United States, offset

administrative costs, preference for local and small businesses, preference for local residents, surety bonds, limitation on allowable individual compensation, restructuring costs under defense contracts, indirect costs of institutions of higher learning, research and development definitions, manufacturing science and technology program, research and development contracting, Federally Funded Research and Development Centers, streamlined research and development contracting procedures test, personal services contracts, services at installations being closed, production surveillance, contractor insurance/pension reviews, best value—stevedoring, returnable cylinders, reflagging or repair work, screening threshold for contractor inventory, notification of proposed program termination of reduction, and Government supply sources.

**DATES:** Effective date May 17, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lucile Martin, Defense Acquisition Regulations Directorate, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20302-3062, telephone (703) 602-0131.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This Defense Acquisition Circular (DAC) 91-7 includes 39 rules and miscellaneous editorial amendments. Twelve of the rules in the DAC (Item XXIII, III, VI, VII, XIV, XVIII, XX, XXII, XXVI, XXVIII, XXIX, and XXX) were published previously in the **Federal Register** and thus are not included as part of this rulemaking notice. These 12 rules are being published in the DAC to revise the looseleaf edition of DFARS to conform to the previously published revisions.

**C. Regulatory Flexibility Act**

*DAC 91-7, Items I, XXI, XXV, XXXV*

The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98-577. However, comments from small entities will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DFARS Case 95-610 in correspondence.

*DAC 91-7, Items II, IV, V, VII, IX, X, XIII, XV, XVI, XVII, XXIV, XXXII, XXXIV, XXXVI, XXXVII, XXXIX*

DoD certifies that these rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because:

Item II—The rule emphasizes existing requirements for contractors to ensure that cost data is reliable and contract costs are properly allocated.

Item IV—The rule only applies to solicitations and contracts with an estimated or actual value exceeding \$5,000,000.

Item V—The rule only applies to contractors and subcontractors that are debarred, suspended, or proposed for debarment.

Item VII—The rule clarified DoD's existing policy regarding contractor selection of subcontractors based on greatest value.

Item IX—The rule clarifies the existing regulatory language regarding statutory restrictions on the use of undefinitized contract actions.

Item X—The rule updates the definitions of SDB and HBCU, and eliminates the requirement for an offeror that represents itself as an SDB, HBCU, or MI, to maintain its status as such as the time of contract award.

Item XIII—The rule implements statutory restrictions on the acquisition of machine tool accessories of foreign manufacture.

Item XV—The rule implements statutory restrictions on the acquisition of fuel cells of foreign manufacture.

Item XVI—The rule implements statutory restrictions on the acquisition of lifeboat survival systems of foreign manufactures or assembly.

Item XVII—The rule only applies to contracts that exceed \$500,000 and involve performance outside the United States.

Item XXIV—The rule prohibits DoD from placing certain limitations on the reimbursement of indirect costs to institutions of higher learning.

Item XXXII—The rule merely simplifies the method used by the Government to determine when on-site production surveillance will be performed on a contract.

Item XXXIV—The rule is consistent with the policy at FAR 15.605 regarding selection of a source whose proposal offers the greatest value to the Government.

Item XXXVI—The rule implements statutory restrictions on foreign performance of certain reflagging or repair work.

Item XXXVII—The rule merely raises the dollar threshold for Government screening of excess contractor inventory prior to disposal.

Item XXXIX—The rule uses standard commercial terms for payment within 30 days, for contractor purchases from Government supply sources.

*DAC 91-7, Items XI, XII, XIX, XXVII, XXXI, XXXIII, XXXVIII*

The Regulatory Flexibility Act applies. A final regulatory analysis has been performed and is available by writing the Defense Acquisition Regulations Directorate, ATTN: Ms. Michele Peterson, PDUSD(A&T)DP(DAR), 3062 Defense Pentagon, Washington, DC 20301-3062.

**D. Paperwork Reduction Act**

*DAC 91-7, Items I, II, V, VII, IX, X, XI, XV, XVI, XIX, XXI, XXIV, XXV, XXXI, XXXII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX*

The Paperwork Reduction Act does not apply because the revisions in this rulemaking notice do not contain and/or affect information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

*DAC 91-7, Items IV, XII, XIII, XVII, XXVII, XXXIII*

The Paperwork Reduction Act applies. OMB has improved the information collection requirements. The following OMB control numbers apply:

Item IV—No. 0704-0372

Item XII—No. 0704-0361

Item XIII—No. 0704-0350

Item XVII—No. 0704-0355

Item XXVII—No. 0704-0188 and 0704-0264

Item XXXIII—No. 0704-0250

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Defense Acquisition Circular (DAC) 91-7 amends the Defense FAR Supplement (DFARS) 1991 edition, prescribes procedures to be followed, and provides informational interest items. The amendments, procedures, and information are summarized as follows:

**Item I—Competitive Prototyping**

This final rule deletes the language at DFARS 207.105(b)(2)(v), which addressed competitive prototyping for major acquisition programs as required by 10 U.S.C. 2438. Section 3006 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) repealed 10 U.S.C. 2438.

**Item II—Contractor Accounting Controls**

This final rule amends DFARS 209.104-1, 232.503-6, 242.302, and 253.209-1, and adds a new subpart at 242.75, to provide policies and procedures applicable to contractor

accounting systems and related internal controls. Contractors receiving cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, must maintain an accounting system and related internal controls which provide reasonable assurance that (1) Applicable laws and regulations are complied with; (2) the accounting system and cost data are reliable; (3) risk of misallocations and mischarges are minimized; and (4) contract allocations and charges are consistent with invoice procedures.

#### **Item III—Award to Foreign Controlled Contractors**

This final rule was issued by Departmental Letter 94-013, effective September 29, 1994. The rule revises and finalizes the interim rule published as Item VII of DAC 91-5. The rule implements 10 U.S.C. 2536, which prohibits award of a DoD contract under a national security program to an entity controlled by a foreign government, if access to proscribed information is required to perform the contract. The final rule differs from the interim rule in that it (1) revises the definition of "entity controlled by a foreign government" at DFARS 252.209-7002 as required by Section 842 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160); (2) revises the definition of "effectively owned or controlled" at 252.209-7002 for clarity; (3) revises the definition of "foreign government" at 252.209-7002 for consistency with the regulations at 31 CFR Chapter V, issued by the Treasury Department Office of Foreign Assets Control; and (4) makes minor clarifying revisions at 209.101, 209.104-1(g)(ii), 225.702, and 252.209-7002(b).

#### **Item IV—Terrorist Countries**

The interim rule issued by Departmental Letter 94-014 on September 29, 1994, is converted to a final rule without change. The rule implements Section 843 of the Fiscal Year 1994 Defense Authorization Act (Public Law 103-160). Section 843 requires offerors and contractors under DoD solicitations and contracts exceeding \$5,000,000 to report commercial transactions conducted with the government of a terrorist country. The rule adds new language at DFARS 209.104-1(g)(iii), a new provision at 252.209-7003, and a new clause at 252.209-7004. The rule also revises the provision at 252.209-7001 for consistency with the terminology used in the new provision and clause.

#### **Item V—Debarment and Suspension**

This final rule adds a new subsection at DFARS 209.405-1 to place restrictions on the issuance of orders under indefinite quantity and Federal Supply Schedule contracts in instances where the contractor has been debarred, suspended, or proposed for debarment. The rule also clarifies that the restriction at FAR 9.405-1(b), against renewal or extension of existing contracts or consent to subcontracts with contractors debarred, suspended, or proposed for debarment, also applies to the exercise of options.

#### **Item VI—Small Purchases in Support of Contingency Operations**

This final rule was issued by Departmental Letter 94-015, effective September 29, 1994. The rule amends DFARS 213.000, 213.101, 213.404, and 213.505 to fully implement DoD's authority to use simplified procedures for acquisitions in support of contingency operations. The rule provides for the use of simplified procedures for acquisitions of \$100,000 or less, for contracts to be awarded and performed outside the United States in support of a contingency operation as defined in 10 U.S.C. 101(a)(13).

#### **Item VII—Greatest Value Sources**

This final rule (1) adds language at DFARS 215.806-1(a) (1) to clarify DoD policy regarding the selection of subcontractors based on greatest value; (2) adds language at 244.202-2 regarding consideration of greatest value when consent to subcontract is required; and (3) revises Section C-207.5 of Appendix C to establish more definitive criteria for Government personnel to consider when evaluating contractor vendor rating systems during a Contractor Purchasing System Review.

#### **Item VIII—Predetermined Indirect Cost Rates**

This final rule was issued by Departmental Letter 94-018, effective October 18, 1994. The rule adds language at DFARS 216.307, 242.705-3, and 252.216-7002 to implement revisions made to OMB Circular A-21, Cost Principles for Educational Institutions, on July 26, 1993. The revised circular provides that indirect cost rates for educational institutions may be predetermined for a period of up to four years when cost experience and other pertinent facts are sufficient to assess the probable level of indirect costs during subsequent accounting periods.

#### **Item IX—Unfinalized Contract Actions**

This final rule revises DFARS 217.7404-3(a)(2), 217.7404-4, and 217.7404-5 to clarify the policy and procedures implementing 10 U.S.C. 2326(b) with regard to limitations on the use of unfinalized contract actions.

#### **Item X—Small Disadvantaged Business, Historically Black Colleges and Universities and Minority Institutions**

The interim rule published as Item XLVII of DAC 91-6 is converted to a final rule without change. The rule implements Subsections 811 (a), (b), and (c) of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160). Subsections 811 (a) and (b) of Pub. L. 103-160 revise the definitions of historically black colleges and universities (HBCU) and minority institutions (MI). Subsection 811(c) deletes the requirement for an offeror, that represents itself on a DoD solicitation as a small disadvantaged business, HBCU, or MI, to maintain its status as such at the time of award. The implementing DFARS language can be found at 219.301(a), 226.7005(a)(1), 252.219-7003(a), 252.219-7006(a), 252.226-7000 (a) and (b), and 252.226-7001(a).

#### **Item XI—Indian Tribal or Alaska Native Corporation**

The interim rule issued by Departmental Letter 94-009 on May 3, 1994, is revised and finalized. The rule implements Section 8051 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8012 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). Sections 8051 and 8012 provide that, notwithstanding any other provision of law, a qualified Indian Tribal Corporation or Alaska Native Corporation furnishing the product of a responsible small business concern shall not be denied the opportunity to compete for and be awarded a contract under the Small Disadvantaged Business (SDB) preference programs. The final rule differs from the interim rule in that it adds references to Section 8012 of Pub. L. 103-335 at DFARS 219.502-2-70(a)(1)(ii), 252.219-700(f)(2), 252.219-7002(c), and 252.219-7006(d)(2).

#### **Item XII—North American Free Trade Agreement**

The interim rule published as Item XVIII of DAC 91-6 is revised and finalized. The rule incorporates Buy American Act and Balance of Payment Program waivers required by the North American Free Trade Agreement

(NAFTA) Implementation Act of 1993 (Pub. L. 103-182). The final rule differs from the interim rule in that it amends the provision at DFARS 252.225-7035, the clause at 252.225-7036, and the clause prescription at 225.408(a)(4)(B), to recognize the \$25,000 threshold for application of NAFTA to Canadian end products.

#### **Item XIII—Valves and Machine Tools**

This final rule adds a new provision at DFARS 252.225-7040, Machine Tool List, and corresponding prescriptive language at 225.7004-2(b) and 225.7004-6(c). The provision at DFARS 252.225-7040 requires offerors to identify the country of manufacture and the cost of machine tool accessories to be provided under a contract, if the accessories are not listed in the schedule as separate line items and are not of U.S. or Canadian origin. This information will facilitate evaluation of machine tool accessories by supply class, as required by 10 U.S.C. 2534, to determine if foreign source restrictions apply.

#### **Item XIV—Restriction on Procurement of Goods**

This interim rule was issued by Departmental Letter 95-009, effective April 10, 1995. The rule revises DFARS Subpart 225.70 and the clauses at 252.225-7017 and 252.225-7029, to implement 10 U.S.C. 2534 as amended by Section 814 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337) and Section 4102(i) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355). Section 814 revises the existing foreign source restrictions for machine tools and valves, buses, chemical weapons antidote, air circuit breakers, and antifriction bearings, by uniformly permitting acquisition of Canadian items, and by expanding and standardizing the waiver criteria. Section 4102(i) exempts acquisitions below the simplified acquisition threshold from these restrictions.

#### **Item XV—Aircraft Fuel Cells**

The interim rule published as Item XLIV of DAC 91-6 is revised and finalized. The rule implements Section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8075 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). Sections 8090 and 8075 prohibit the use of fiscal year 1994 or 1995 funds to purchase aircraft fuel cells unless such cells are produced or manufactured in the United States by a domestic-operated entity. The final rule differs from the interim rule in that it amends the language at DFARS

225.7021-1 and 225.7021-3(a) to address fiscal year 1995 requirements.

#### **Item XVI—Lifeboat Survival System**

The interim rule published as Item XLVI of DAC 91-6 is revised and finalized. The rule implements Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). Sections 8124 and 8093 prohibit the purchase of a totally enclosed lifeboat survival system unless 50 percent or more of the system's components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the system is performed in the United States. The final rule differs from the interim rule in that it adds a reference to Pub. L. 103-335 at DFARS 225.7022-1.

#### **Item XVII—Performance Outside the United States**

The interim rule published as Item XXIX of DAC 91-5 is revised and finalized. The rule implements 10 U.S.C. 2410g, which requires offerors and contractors to provide the Government with advance notification of contract performance outside the United States and Canada in certain instances. The final rule differs from the interim rule in that (1) Detailed reporting requirements are deleted from the clause at DFARS 252.225-7026; (2) DD Form 2139, which was deleted by DAC 91-5, is reinstated with a new title and revised to include the reporting requirements deleted from the clause at DFARS 252.225-7026; and (3) editorial changes are made at 225.7202 and 252.225-7026(b)(3).

#### **Item XVIII—Offset Administrative Costs**

This final rule was issued by Departmental Letter 94-012, effective September 28, 1994. The rule revises DFARS 225.7303-2 to change the criteria for contractor recovery of offset administrative costs under foreign military sale contracts. The change eliminates the requirement for inclusion of specific information regarding offset costs in Letters of Offer and Acceptance for foreign military sales. A corresponding revision has been made to DoD 5105.38-M, Security Assistance Management Manual.

#### **Item XIX—Preference for Local and Small Businesses**

The interim rule issued as Item XLV of DAC 91-6 is revised and finalized. The rule implements Section 2912 of the Fiscal Year 1994 Defense

Authorization Act (Pub. L. 103-160). Section 2912 requires DoD, when entering into contracts as part of the closure or realignment of a military installation under a base closure law, to give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business and small disadvantaged business concerns. The final rule differs from the interim rule in that it (1) Revises the definition of "vicinity" at DFARS 226.7101 to permit modification of the definition by the agency head; and (2) clarifies the procedures at 226.7103 to address criteria for consideration of awards to contractors under the section 8(a) program.

#### **Item XX—Preference for Local Residents**

This interim rule was issued by Departmental Letter 95-003, effective January 26, 1995. The rule amends DFARS Subpart 226.71 to implement Section 817 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 817 authorizes the Secretary of Defense to give preference to entities that plan to hire local residents, when entering into contracts for services to be performed at a military installation that is affected by closure or alignment under a base closure law.

#### **Item XXI—Surety Bonds**

This final rule amends DFARS 228.102-1 to implement Section 323 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 323 extends the authority to issue surety bonds for certain environmental programs through December 31, 1999.

#### **Item XXII—Limitation on Allowable Individual Compensation**

This interim rule was issued by Departmental Letter 94-019, effective December 14, 1994. The rule amends DFARS 231.205, 231.303, 231.603, and 231.703 to implement Section 8117 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335). Section 8117 limits allowable costs for individual compensation to \$250,000 per year. This limitation applies to contracts that are awarded after April 15, 1995, and that are funded with Fiscal Year 1995 appropriations.

#### **Item XXIII—Restructuring Costs Under Defense Contracts**

This interim rule was issued by Departmental Letter 94-020, effective December 29, 1994. The rule adds new sections at DFARS 231.205-70, 242.1202, and 242.1204 to implement

Section 818 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 818 restricts DoD from reimbursing restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

#### **Item XXIV—Indirect Costs of Institutions of Higher Learning**

The interim rule issued by Departmental Letter 94-010 on May 5, 1994, is converted to a final rule without change. The rule adds a new section at DFARS 231.303 to implement Section 841 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160). Section 481 prohibits DoD from placing any limitation on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher learning, unless that same limitation is applied uniformly to all other organizations performing similar work under DoD contracts.

#### **Item XXV—Research and Development Definitions**

This final rule amends DFARS 235.001 to incorporate the definitions of the categories of research and development found in DoD 7000.14-R, Financial Management Regulation.

#### **Item XXVI—Manufacturing Science and Technology Program**

This interim rule was issued by Departmental Letter 95-002, effective January 17, 1995. The rule adds language at DFARS 235.006 (a) and (b)(iv) to implement Section 256 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 256 requires the use of competitive procedures in awarding contracts under the Manufacturing Science and Technology Program, and use of a cost-sharing arrangement for these contracts unless an alternative arrangement is approved by the Secretary of Defense.

#### **Item XXVII—Research and Development Contracting**

This final rule revises DFARS 235.010(b) to provide updated information regarding the Defense Technical Information Center (DTIC). The rule also adds two new clauses at DFARS 252.235-7010, Acknowledgment of Support and Disclaimer, and DFARS 252.235-7011, Final Scientific or Technical Report Requirement. The clause at 252.235-7010 requires contractors to include an acknowledgment of the Government's support in the publication of any material based on or developed under a Government contract. The clause at 252.235-7011 requires contractors to

provide DTIC with two copies of scientific or technical reports delivered under a Government contract.

#### **Item XXVIII—Federally Funded Research and Development Centers (FFRDCs)**

This interim rule was issued by Departmental Letter 95-005, effective March 3, 1995. The rule adds a new section at DFARS 235.017-1 to implement Section 217 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 217 allows DoD-sponsored FFRDCs that function primarily as research laboratories to respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology.

#### **Item XXIX—Streamlined Research and Development Contracting Procedures Test**

This final rule was issued by Departmental Letter 94-017, effective October 4, 1994, and Departmental Letter 95-008, effective March 21, 1995. The rule adds a new subpart at DFARS 235.70 to establish streamlined research and development contracting procedures for use by selected DoD contracting offices under a test program. The test will be conducted for a 20-month period extending from October 1, 1994, to May 31, 1996.

#### **Item XXX—Personal Service Contracts**

This interim rule was issued by Departmental Letter 95-001, effective January 5, 1995. The rule adds language at DFARS 206.102(d) and revises DFARS 237.104(b)(ii) to implement Section 712 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160) and Section 704 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 712 requires the Secretary of Defense to establish procedures for entering into personal service contracts under 10 U.S.C. 1091 to carry out health care responsibilities in medical/dental treatment facilities. Section 704 provides authority for the Secretary of Defense to enter into personal service contracts under 10 U.S.C. 1091 to provide the services of clinical counselors, family advocacy program staff, and victim's services representatives.

#### **Item XXXI—Services at Installations Being Closed**

The interim rule issued by Departmental Letter 94-011 on July 8, 1994, is revised and finalized. The rule implements Section 2907 of the Fiscal Year 1994 Defense Authorization Act

(Pub. L. 103-160). Section 2907 permits the Secretary of Defense to contract with local governments for police, fire protection, airfield operation, or other community services at military installations being closed under Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526) and the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510). The final rule differs from the interim rule in that it adds a new paragraph at DFARS 237.7401(d) to clarify that Subpart 222.71, Right of First Refusal of Employment, applies to contracts with local governments unless it conflicts with the local government's civil service selection procedures.

#### **Item XXXII—Production Surveillance**

This final rule revises DFARS 242.1104 to simplify the criteria for determining the extent of production surveillance to be performed under a contract. Category 1, 2, and 3 surveillance criteria are eliminated and replaced with streamlined surveillance requirements.

#### **Item XXXIII—Contractor Insurance/Pension Reviews**

This final rule revises DFARS 242.7302(a) to increase the dollar threshold for performance of Contractor Insurance/Pension Reviews from \$10,000,000 to \$40,000,000. The rule also adds language at 242.7302(d) to clarify the criteria for determining a contractor's eligibility for insurance/pension review.

#### **Item XXXIV—Best Value—Stevedoring**

The interim rule issued by Departmental Letter 94-016, effective September 29, 1994, is converted to a final rule without change. The rule revises DFARS 247.270-5 and 247.270-6 to permit contracting officers to consider factors other than cost or price when evaluating offers for stevedoring services.

#### **Item XXXV—Returnable Cylinders**

This final rule revises the clause at DFARS 252.247-7021 and the corresponding prescriptive language at 247.305-70 to delete references to use of the clause for acquisitions involving returnable cylinders. The clause at DFARS 252.247-7021 now applies to returnable containers other than cylinders as the clause at FAR 52.247-66 applies to returnable cylinders. References to a 30-day rent-free Government use period are also deleted from the clause to facilitate tailoring of this time period to the circumstances of the acquisition.

**Item XXXVI—Reflagging or Repair Work**

The interim rule published as Item XLIII of DAC 91-6 is revised and finalized. The rule implements Section 315 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160). Section 315 places restrictions on the performance of reflagging or repair work on vessels used under time charter contracts. The final rule differs from the interim rule in that it revises the language at DFARS 247.571(c) and 252.247-7025 to further clarify the restrictions on the performance of reflagging or repair work.

**Item XXXVII—Screening Threshold**

This final rule amends DFARS 245.608-70 to raise the dollar threshold for screening serviceable and unusable contractor inventory, with no national stock number, through the Contractor Inventory Redistribution System. The threshold is raised from \$500 to \$1,000 (except for furniture) to coincide with the threshold at FAR 45.608-2.

**Item XXXVIII—Notification of Proposed Program Termination or Reduction**

The interim rule published as Item XXXVIII of DAC 91-6 is revised and finalized. The rule implements Section 1372 of the Fiscal Year 1994 Defense Authorization Act (Pub. L. 103-160) as amended by Section 1142 of the Fiscal Year 1995 Defense Authorization Act (Pub. L. 103-337). Section 1372 requires the Secretary of Defense to provide certain notices regarding the proposed termination or substantial reduction of major defense programs. The final rule differs from the interim rule in that it makes clarifying revisions at DFARS 249.7003(b)(1) and 252.249-7002(c)(1), and changes the notification periods at 249.7003(b)(2) and (3) from 90 days to 60 days, as required by Section 1142 of Pub. L. 103-337.

**Item XXXIX—Government Supply Sources**

This final rule amends DFARS 251.102, adds a new section at 251.105, and amends the clause at 252.251-7000 to clarify that, when a contractor is authorized to use Government supply sources (1) Payments to the Government for such supplies are due within 30 days of the Government's invoice; (2) contractors must pay interest on late payments to the Government; and (3) a contractor's failure to pay may result in loss of authorization to use Government supply sources.

**Item XL—Editorials**

(Note: The asterisked items are revisions being made only in the looseleaf edition of DFARS.)

(a) The definition of "contracting activity" at DFARS Section 202.101 is amended to update the contracting activity names that appear under the NAVY heading.

(b) The definition of "contracting activity" at DFARS Section 202.101 is amended by adding under the heading United States Special Operations Command and after the word "Headquarters," the words "United States Special Operations Command" that were inadvertently removed in DAC 91-6.

(c) DFARS 203.502-2 is amended by revising paragraph (h)(ii) to read "Naval Criminal Investigative Service."

\* (d) DFARS 204.7202-2(b)(2)(iii)(B) is amended to revise "Nay" to read "Navy."

(e) DFARS 206.302-5(c)(i)(B) is amended to revise the parenthetical reference "(Acquisition)" to read "(Acquisition & Technology)."

\* (f) DFARS 215.804-3(b)(1)(B)(3) is amended to revise "submisson" to read "submission."

(g) DFARS 225.603(b)(i)(D) and (b)(ii) are amended to revise the address for DCMAO, New York.

\* (h) DFARS 225.872-5(a) is amended to revise "bee" to read "been."

(i) DFARS 225.872-5(a) is amended to reflect the correct title of the Deputy Director of Defense Procurement (Foreign Contracting).

(j) DFARS 225.872-6(b) is amended to reflect the correct title of the Deputy Director of Defense Procurement (Foreign Contracting).

\* (k) DFARS 225.7001(c) is amended to revise "speciality" to read "specialty."

\* (l) DFARS Table of Contents for section 226.71 is amended to revise the title to read: "Preference for Local and Small Businesses."

\* (m) DFARS Table of Contents for section 232 is amended to reflect the proper sequence of Subparts 232.7 and 232.8.

(n) DFARS 232.108(1)(i) is revised to update the Army finance office designation.

(o) DFARS 235.006(b)(i)(C)(I)(iii) is revised to clarify the references to applicable statutes.

(p) DFARS 235.015-70(d)(3)(ii) is amended by revising the word "which" to read "who."

(q) DFARS 237.7302 is amended to revise the reference "10 U.S.C. 2304(a)(i)" to read "10 U.S.C. 2304(a)(1)."

\* (r) DFARS 252 Table of Contents is amended to revise the title for clause number 252.225-7018.

(s) DFARS 252.225-7009(f)(2)(iv) is amended to revise the address for DCMAO, New York.

(t) DFARS 252.225-7010(e) is amended to revise the address for DCMAO, New York.

(u) DFARS 252.225-7037(f)(2)(iv) is amended to revise the address for DCMAO, New York.

\* (v) DFARS 253 is amended to update DD Form 879, DD Form 1155 and DD Form 1155C-1.

\* (w) DFARS 253 is amended to delete the following obsolete forms: DD Form 1114, DD Form 1568, DD Form 1592, and DD Form 2025. DD Form 1568 has been replaced by Standard form 1146. The other forms have no replacement.

**Interim Rules Adopted as Final Without Changes****PARTS 209 AND 252—[AMENDED]**

The interim rule that was published at 59 FR 51130 on October 7, 1994, is adopted as final without change.

**PARTS 219, 226, AND 252—[AMENDED]**

The interim rule that was published as Item XLVII of DAC 91-6 at 59 FR 27662 on May 27, 1994, is adopted as final without change.

**PART 231—[AMENDED]**

The interim rule that was published at 59 FR 26143 on May 19, 1994, is adopted as final without change.

**PART 247—[AMENDED]**

The interim rule that was published at 59 FR 50851 on October 6, 1994, is adopted as final without change.

**Interim Rules Adopted as Final With Changes****PARTS 206, 222, 226, 237, AND 252—[AMENDED]**

The interim rule that was published at 59 FR 36088 on July 15, 1994 is adopted as final with minor editorial amendments at sections 226.7200(a), 237.7400, 237.7401, 237.7402, and with the addition of 237.7401(d).

**PARTS 219 AND 226—[AMENDED]**

The interim rule that was published at 59 FR 12191 on March 16, 1994, as corrected at 59 FR 15501 on April 1, 1994, is adopted as final with amendments at sections 226.7101 and 226.7103.

**PARTS 219 AND 252—[AMENDED]**

The interim rule that was published at 59 FR 24958 on May 13, 1994, is adopted as final with revisions at 219.502-2-70, 252.219-7001, 252.219-7002, and 252.219-7006.

**PARTS 225 AND 252—[AMENDED]**

The interim rule that was published at 59 FR 1288 on January 10, 1994, as corrected at 59 FR 8041 on February 17, 1994 and at 59 FR 39974 on August 5, 1994, is adopted as final with amendments at sections 225.408, 252.225-7035, and 252.225-7036.

**PARTS 225 AND 252—[AMENDED]**

The interim rule that was published as Item XLIV of DAC 91-6 at 59 FR 11729 on March 14, 1994, as corrected at 59 FR 38931 on August 1, 1994, is adopted as final with amendments at sections 225.7021-1 and 225.7021-3.

**PARTS 225 AND 252—[AMENDED]**

The interim rule that was published as Item XLVI of DAC 91-6 at 59 FR 19146 on April 22, 1994, is adopted as final with amendments at section 225.7022-1.

**PARTS 225, 252, AND 253—[AMENDED]**

The interim rule that was published as Item XXIX of DAC 91-5 at 58 FR 28458 on May 13, 1993, is adopted as final with amendments at 225.7202 and 252.225-7026. In addition, DD Form 2139 is reinstated with a new title and revised.

**PARTS 247 AND 252—[AMENDED]**

The interim rule was published as Item XLIV of DAC 91-6 at 59 FR 27662 on May 27, 1994, is adopted as final with amendments at 247.571, 247.573, and 252.247-7025.

**PARTS 249 AND 252—[AMENDED]**

The interim rule that was published as Item XXXVIII of DAC 91-6 at 59 FR 27662 on May 27, 1994, is adopted as final with amendments at 249.7003 and 252.249-7002.

**List of Subjects in 48 CFR Parts 202, 203, 206, 207, 209, 215, 217, 219, 225, 226, 228, 231, 232, 235, 237, 242, 244, 245, 247, 249, 251, 252, 253, and Appendix C to Chapter 2**

Government procurement.

**Amendments to 48 CFR Chapter 2 (Defense FAR Supplement)**

48 CFR Chapter 2 (the Defense FAR Supplement) is amended as set forth below.

1. The authority for 48 CFR parts 202, 203, 206, 207, 209, 215, 217, 291, 225, 226, 228, 231, 232, 235, 237, 242, 244, 245, 247, 249, 251, 252, 253, and Appendix C to Chapter 2 is revised to read as follows:

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

**PART 202—DEFINITIONS OF WORDS AND TERMS****202.101 [Amended]**

2. Section 202.101 is amended by revising in the definition entitled *Contracting activity* under the heading Navy, the entry "Deputate, Acquisition Policy, Integrity and Accountability, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)" to read "Deputy, Acquisition Policy, Integrity and Accountability, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition)".

**PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST****203.502-2 [Amended]**

3. Section 203.502-2 is amended by revising in paragraph (h)(ii) the phrase "Naval Investigative Service" to read "Naval Criminal Investigative Service."

**PART 206—COMPETITION REQUIREMENTS****206.302-5 [Amended]**

4. Section 206.302-5 is amended by revising in paragraph (c)(i)(B) the phrase "Office of the Under Secretary of Defense for Acquisition" to read "Office of the Under Secretary of Defense (Acquisition & Technology)."

5. Section 206.304 is amended by revising paragraphs (a)(4)(A)(2) and (a)(4)(B) to read as follows:

**206.304 Approval of the justification.**

(a)(4)(A) \* \* \*

(1) \* \* \*

(2) In the case of the Under Secretary of Defense (Acquisition & Technology) (USD(A&T)), to—

\* \* \* \* \*

(B) For proposed contracts over \$50 million, this authority is not delegable, except in the case of the USD(A&T) who may delegate as specified in paragraph (a)(4)(A)(2) of this section.

**PART 207—ACQUISITION PLANNING****207.105 [Amended]**

6. Section 207.105 is amended by removing paragraph (b)(2)(v).

**PART 209—CONTRACTOR QUALIFICATIONS****209.103 [Amended]**

7. Section 209.103(a)(i)(c) is amended by revising the reference "Under Secretary of Defense (Acquisition)" to read "Under Secretary of Defense (Acquisition & Technology)."

8. Section 209.104-1 is amended by revising paragraph (e) to read as follows:

**209.104-1 General standards.**

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor's accounting system and related internal controls must provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with invoice procedures.

\* \* \* \* \*

9. Section 209.405-1 is added to read as follows:

**209.405-1 Continuation of current contracts.**

(a) Unless the agency head makes a written determination that a compelling reason exists to do so, ordering activities shall not—

(i) Place orders exceeding the guaranteed minimum under indefinite quantity contracts; or

(ii) When the agency is an optional user, place orders against Federal Supply Schedule contracts.

(b) This includes exercise of options.

**PART 215—CONTRACTING BY NEGOTIATION**

10. Section 215.806-1 is amended by revising paragraph (a)(1) to read as follows:

**215.806-1 General.**

\* \* \* \* \*

(a)(1) Contractor and subcontractor proposals may reflect the selection of sources whose proposals offer the greatest value to the Government in terms of performance and other factors. If the selection is based on greatest value rather than lowest price, the analysis supporting subcontractor

selection should include a discussion of the factors considered in the selection (see also FAR 15.605(c) and 215.605(c)). If the contractor's analysis is not adequate, return it for correction of deficiencies.

\* \* \* \* \*

**PART 217—SPECIAL CONTRACTING METHODS**

11. Section 217.7404-3 is amended by revising paragraph (a)(2) to read as follows:

**217.7404-3 Definitization schedule.**

- (a) \* \* \*
- (1) \* \* \*

(2) The date on which the amount of funds obligated under the contract action is equal to more than 50 percent of the not-to-exceed price.

\* \* \* \* \*

12. Section 217.7404-4 is revised to read as follows:

**217.7404-4 Limitations on obligations.**

The Government shall not obligate more than 50 percent of the not-to-exceed price before definitization. However, if a contractor submits a qualifying proposal before 50 percent of the not-to-exceed price has been obligated by the Government, then the limitation on obligations before definitization may be increased to no more than 75 percent (see 232.102-70 for coverage on provisional delivery payments).

13. Section 217.7404-5 is revised to read as follows:

**217.7404-5 Exceptions.**

(a) The limitations in 217.7404-2, 217.7404-3, and 217.7404-4 do not apply to UCAs for the purchase of initial spares.

(b) The head of an agency may waive the limitations in 217.7404-2, 217.7404-3, and 217.7404-4 for UCAs if the head of the agency determines that the waiver is necessary to support a contingency operation.

**PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

14. Section 219.502-2-70 is amended by revising paragraph (a)(1)(ii) to read as follows:

**219.502-2-70 Total set-asides for small disadvantaged business concerns.**

- (a) \* \* \*
- (1) \* \* \*
- (i) \* \* \*

(ii) In the case of an SDB regular dealer owned by an Indian tribe, including an Alaska Native Corporation,

will provide the supplies of a small business for contracts awarded during fiscal years 1994 and 1995, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335; or,

\* \* \* \* \*

**PART 225—BUY AMERICAN ACT—CONSTRUCTION MATERIALS**

15. Section 225.408 is amended by revising paragraph (a)(4)(B) to read as follows:

**225.408 Solicitation provision and contract clause.**

- (a)(1) \* \* \*

\* \* \* \* \*

- (4)(A) \* \* \*

(B)(i) Use the clause in all solicitations and contracts for the items listed at 225.403-70, when the estimated value is \$50,000 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(ii) Use the clause with its Alternate I when the estimated value is between \$25,000 and \$50,000.

\* \* \* \* \*

**225.603 [Amended]**

16. Section 225.603 is amended in paragraph (b)(i)(D) by revising the phrase "Commander, DCMAO New York, ATTN: Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014—" to read "Commander, DCMAO New York, ATTN Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, NY 10305-5013—".

**225.603 [Amended]**

17. Section 225.603 is amended in paragraph (b)(ii) by revising the phrase "Chief, Customs Division, International Logistics Office, DCMAO New York" to read "Customs Team, DCMDN-GNIC, DCMAO New York".

**225.872-5 [Amended]**

18. Section 225.872-5(a) is amended by revising "Foreign Contracting Directorate, Office of the Director of Defense Procurement" to read "Deputy Director of Defense Procurement (Foreign Contracting)."

**225.872-6 [Amended]**

19. Section 225.872-6(b) is amended by revising "Foreign Contracting Directorate, Office of the Director of Defense Procurement" to read "Deputy Director of Defense Procurement (Foreign Contracting)."

20. Section 225.7004-2 is amended by revising paragraph (b) to read as follows:

**225.7004-2 Applicability.**

\* \* \* \* \*

(b) Machine tool accessories classified under FSC 3460 or 3461 are not components under 225.7004-5. Where a solicitation for machine tools includes machine tool accessories, list known machine tool accessories which are not separate line items in the provision at 252.225-7040, Machine Tool List. Identify accessories which are separate line items in the schedule. The contracting activity must exercise judgment in determining whether an item is an accessory or a component. This determination should be based on the use of the item in the machine tool being purchased.

\* \* \* \* \*

21. Section 225.7004-6 is amended by adding paragraph (c) to read as follows:

**225.7004-6 Contract clauses.**

\* \* \* \* \*

(c) Use the provision at 252.225-7040, Machine Tool List, in all solicitations for machine tools which contain the clause at 252.225-7017 except where—

(1) All machine tool accessories are listed as separate line items; and

(2) The solicitation does not allow offerors to provide accessories which are not specifically required by the specifications.

22. Section 225.7021-1 is revised to read as follows:

**225.7021-1 Restriction.**

In accordance with Section 8090 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8075 of the Fiscal Year 1995 Defense Appropriations Act (Pub. L. 103-335), do not purchase aircraft fuel cells unless they are produced or manufactured in the United States by a domestic-operated entity.

23. Section 225.7021-3 is revised to read as follows:

**225.7021-3 Contract clause.**

Unless a waiver has been granted in accordance with 225.7021-2, use the clause at 252.225-7038, Restriction on Acquisition of Aircraft Fuel Cells, in all solicitations and contracts which—

(a) Use fiscal year 1994 or 1995 funds; and

(b) Require delivery of aircraft fuel cells.

24. Section 225.7022-1 is revised to read as follows:

**225.7022-1 Restriction.**

In accordance with Section 8124 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103-139) and Section 8093 of the Fiscal Year 1995 Defense Appropriations Act (Pub.

L. 103-335), do not purchase a totally enclosed lifeboat survival system, which consists of the lifeboat and associated davits and winches, unless 50 percent or more of the components are manufactured in the United States, and 50 percent or more of the labor in the final manufacture and assembly of the entire system is performed in the United States.

25. Section 225.7202 is amended by revising "OUSD(A)DP(FC)" to read "OUSD(A&T)DP(FC)."

#### **PART 226—OTHER SOCIOECONOMIC PROGRAMS**

26-28. Section 226.7101 is revised to read as follows:

##### **226.7101 Definition.**

*Vicinity*, as used in this subpart, means the county or counties in which the military installation to be closed or realigned is located and all adjacent counties, unless otherwise defined by the agency head.

29. Section 226.7103 is revised to read as follows:

##### **226.7103 Procedure.**

In considering acquisitions for award through the section 8(a) program (subpart 219.8 and FAR subpart 19.8) or in making set-aside decisions under subpart 219.5 and FAR subpart 19.5 for acquisitions in support of a base closure or realignment, the contracting officer shall—

(a) Determine whether there is a reasonable expectation that offers will be received from responsible business concerns located in the vicinity of the military installation that is being closed or realigned.

(b) If offers can not be expected from business concerns in the vicinity, proceed with section 8(a) or set-aside consideration as otherwise indicated in part 219 and FAR part 19.

(c) If offers can be expected from business concerns in the vicinity—

(1) Consider section 8(a) only if the 8(a) contractor is located in the vicinity.

(2) Set aside the acquisition for small disadvantaged business only if one of the expected offers is from a small disadvantaged business located in the vicinity.

(3) Set aside the acquisition for small business only if one of the expected offers is from a small business located in the vicinity.

##### **226.7200 [Amended]**

30 and 31. Section 226.7200 is amended by revising in paragraph (a) the word "established" to read "establishes."

#### **PART 228—BONDS AND INSURANCE**

32. Section 228.102-1 is amended by revising the introductory paragraph to read as follows:

##### **228.102-1 General.**

For Defense Environmental Restoration Program construction contracts entered into pursuant to 10 U.S.C. 2701 and executed between December 5, 1991, and December 31, 1999—

\* \* \* \* \*

#### **PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**

##### **231.205-70 [Amended]**

33. Section 231.205-70(b)(4) is amended to revise in the second sentence the word "repositioning" to read "repositionings."

##### **231.703 [Amended]**

34. Section 231.703 is amended to revise in paragraph (1) the reference "231.603(a)" to read "231.603(1)."

#### **PART 232—CONTRACT FINANCING**

##### **232.108 [Amended]**

35. Section 232.108 is amended by revising in paragraph (1)(i) the phrase "Army—Chief of Contract Financing, Office of the Comptroller" to read "Army—Office, Assistant Secretary of the Army (Financial Management)".

36. Section 232.503-6 is amended by adding a new paragraph (b) to read as follows:

##### **232.503-6 Suspension or reduction of payments.**

(b) *Contractor noncompliance.*

See also 242.7503.

\* \* \* \* \*

#### **PART 235—RESEARCH AND DEVELOPMENT CONTRACTING**

37. Section 235.001 is revised to read as follows:

##### **235.001 Definitions.**

The following terms are defined in DoD 7000.14-R, Financial Management Regulation. As used in this part—

*Advanced development* means all effort directed toward projects which have moved into the development of hardware for test. The prime proof of this type of effort is proof of design concept rather than the development of hardware. Projects in this category have a potential military application.

*Basic research* means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental,

and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for—

(1) Subsequent exploratory and advanced developments in defense related technologies; and

(2) New or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

*Demonstration/validation* means those efforts necessary to evaluate integrated technologies in as realistic an operating environment as possible to assess the performance or cost reduction potential of advanced technology. The demonstration/validation phase is system specific and also includes advanced technology demonstrations that help expedite technology transition from the laboratory to operational use.

*Engineering and manufacturing development* means those projects in full-scale engineering development but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects where program control is exercised by review of individual projects.

*Exploratory development* means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming, and planning efforts. It would thus include studies, investigations, and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

*Management and support* means all effort directed toward support of installations and operations required for general research and development use. This includes military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contracted, would be assigned to projects or as a line item in the research, exploratory development, or advanced development

program areas, as appropriate. Management and support is not "research and development" except in exceptional cases. For example, construction of recreational facilities at an installation is not "research and development" work, even if the installation is used only for research and development work.

*Operational system development* means those projects still in full-scale engineering development, but which have received approval for production through Defense Acquisition Board or other action, or production funds have been included in the DoD budget submission for the budget or subsequent year. All items in this area are major line item projects which appear as RDT&E costs of weapons systems elements in other programs. Program control is exercised by review of the individual projects.

*Research and development* ordinarily covers only the following categories—

- (1) Basic research;
- (2) Exploratory development;
- (3) Advanced development;
- (4) Demonstration/validation;
- (5) Engineering and manufacturing development; and
- (6) Operational system development.

38. Section 235.006 is amended by revising paragraph (b)(i)(C)(1)(iii) to read as follows:

**235.006 Contracting methods and contract type.**

\* \* \* \* \*

- (b)(i) \* \* \*
- (C) \* \* \*
- (1) \* \* \*

(iii) The development of a major system (as defined in FAR 34.001) or subsystem thereof, if the contract is over \$25 million, or is over \$10 million and is funded with FY90 funds (Pub. L. 101-165, Section 9048), FY91 funds (Pub. L. 101-511, Section 8038), FY92 funds (Pub. L. 102-172, Section 8037), or FY93 funds (Pub. L. 102-396, Section 9037).

\* \* \* \* \*

39. Section 235.010 is revised to read as follows:

**235.010 Scientific and technical reports.**

(b) The Defense Technical Information Center (DTIC) is responsible for collecting all scientific or technological observations, findings, recommendations, and results derived from DoD endeavors, including both in-house and contracted efforts. The DTIC has eligibility and registration requirements for use of its services. Requests for eligibility and registration information should be addressed to DTIC-BCS, Cameron Station, Alexandria, VA 22304-6145.

**235.015-70 [Amended]**

40. Section 235.015-70(d)(3)(ii) is amended by revising the second occurrence of the word "which" to read "who."

41. Section 235.071 is amended by adding paragraphs (c) and (d) to read as follows:

**235.071 Additional contract clauses.**

- (a) \* \* \*
- (b) \* \* \*

(c) Use the clause at 252.235-7010, Acknowledgement of Support and Disclaimer, in solicitations and contracts for research and development.

(d) Use the clause at 252.235-7011, Final Scientific or Technical Report, in solicitations and contracts for research and development.

42. Section 235.017-1 is added to read as follows:

**235.017-1 Sponsoring agreements.**

(c)(4) DoD-sponsored FFRDCs that function primarily as research laboratories may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Pub. L. 103-337).

**PART 237—SERVICE CONTRACTING**

**237.7302 [Amended]**

43. Section 237.7302 is amended by revising in the last sentence the reference "10 U.S.C. 2304(a)(i)" to read "10 U.S.C. 2304(a)(1)."

**237.7400 [Amended]**

44. Section 237.7400 is amended by revising the reference "(Pub. L. 100-536)" to read "(Pub. L. 100-526)."

45. Section 237.7401 is amended in paragraph (c) by revising "government" to read "government;" by revising the word "is" to read "are"; and by adding a new paragraph (d) to read as follows:

**237.7401 Policy.**

\* \* \* \* \*

(d) Includes the requirement of subpart 222.71, Right of First Refusal of Employment, unless it conflicts with the local government's civil service selection procedures.

**237.7402 [Amended]**

46. Section 237.7402 is amended by revising the word "subject" to read "subpart."

**PART 242—CONTRACT ADMINISTRATION**

47. Section 242.302 is amended by adding a new paragraph (a)(7) to read as follows:

**242.302 Contract administration functions.**

- (a)(4) \* \* \*

(7) See 242.7503 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

\* \* \* \* \*

48. Section 242.1104 is revised to read as follows:

**242.1104 Surveillance requirements.**

(a)(i) As a minimum, contracts will receive pre-delivery telephonic surveillance.

(ii) Contracts in the following categories will receive pre-delivery on-site production surveillance:

(A) Contracts assigned criticality designator A (see FAR 42.1105).

(B) Contracts specifically identified for special surveillance by the contracting officer.

(C) Any contract where telephonic surveillance reveals actual or anticipated delinquency unless the contract administration office, in coordination with the contracting officer, decides that on-site surveillance is not warranted.

49. Section 242.7302 is amended by revising paragraph (a) and by adding paragraph (d) to read as follows:

**242.7302 Requirements.**

(a) A CIPR shall be conducted for each contractor whose qualifying sales to the Government exceeded \$40 million during the contractor's preceding fiscal year. Qualifying sales are sales for which certified cost or pricing data were required under 10 U.S.C. 2306, as implemented in FAR 15.804 (unless exempt in accordance with FAR 15.804-3), or which are cost-reimbursement type contracts. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

\* \* \* \* \*

(d) Reviews of selected insurance and pension elements may be conducted for contractors not meeting the criteria in paragraph (a) of this section if significant problems have been identified.

50. A new subpart 242.75 is added to read as follows:

- Sec. 242.7500 Scope of subpart.
- 242.7501 Definition.
- 242.7502 Policy.
- 242.7503 Procedures.

**Subpart 242.75—Contractor Accounting Systems and Related Controls**

**242.7500 Scope of subpart.**

This subpart provides policies and procedures applicable to contractor

accounting systems and related internal controls.

#### 242.7501 Definition.

*Internal controls* means those policies and procedures established by contractor management to provide reasonable assurance that applicable laws and regulations are complied with and that actual and estimated costs are equitably allocated within the accounting system.

#### 242.7502 Policy.

Contractors receiving cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, shall maintain an accounting system and related internal controls throughout contract performance which provide reasonable assurance that—

- (a) Applicable laws and regulations are complied with;
- (b) The accounting system and cost data are reliable;
- (c) Risk of misallocations and mischarges are minimized; and
- (d) Contract allocations and charges are consistent with invoice procedures.

#### 242.7503 Procedures.

- (a) Upon receipt of an audit report identifying significant accounting system or related internal control deficiencies, the ACO will—
  - (1) Provide a copy of the report to the contractor and allow 30 days, or a reasonable extension, for the contractor to respond;
  - (2) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.
  - (3) If the contractor disagrees, the contractor should provide rationale in its written response.
  - (4) The ACO will consider whether it is appropriate to suspend a percentage of progress payments or reimbursement of costs proportionate to the estimated cost risk to the Government, considering audit reports or other relevant input, until the contractor submits a corrective action plan acceptable to the ACO and corrects the deficiencies. (See FAR 32.503-6 (a) and (b) and FAR 42.302(a)(7)).

### PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

51. Subpart 244.2 is added to read as follows:

#### 244.2 Consent to subcontracts.

Sec.

- 244.202 Contracting officer's evaluation.
- 244.202-2 Considerations.

#### 242.2 Consent to subcontracts.

#### 244.202 Contracting officer's evaluation.

#### 244.202-2 Considerations.

(a) Where other than lowest price is the basis for subcontractor selection, has the contractor adequately substantiated the selection as offering the greatest value to the Government?

### PART 245—GOVERNMENT PROPERTY

52. Section 245.608-70 is amended by revising paragraph (a)(3) to read as follows:

#### 245.608-70 Contractor inventory redistribution system (CIRS).

- (a) \* \* \*
- (3) Has a line item acquisition value in excess of \$1,000 (\$500 for furniture) but no national stock number.

\* \* \* \* \*

### PART 247—TRANSPORTATION

53. Section 247.305-70 is revised to read as follows:

#### 247.305-70 Returnable containers other than cylinders.

Use the clause at 252.247-7021, Returnable Containers Other Than Cylinders, in solicitations and contracts for supplies involving contractor-furnished returnable reels, spools, drums, carboys, liquid petroleum gas containers, or other returnable containers if the contractor is to retain title to the containers.

54. Section 247.571 is amended by revising paragraph (c); by removing paragraph (d); and by redesignating paragraph (e) as paragraph (d) to read as follows:

#### 247.571 Policy.

\* \* \* \* \*

(c)(1) Any vessel used under a time charter contract for the transportation of supplies shall have any reflagging or repair work, as defined in the clause at 252.247-7205, Reflagging or Repair Work, performed in the United States or its territories, if the reflagging or repair work is performed—

- (i) On a vessel for which the contractor submitted an offer in response to the solicitation for the contract; and
- (ii) Prior to acceptance of the vessel by the Government.

(2) The Secretary of Defense may waive this requirement if the Secretary determines that such waiver is critical

to the national security of the United States.

\* \* \* \* \*

55. Section 247.573 is amended by revising paragraph (d) to read as follows:

#### 247.573 Solicitation provision and contract clauses.

\* \* \* \* \*

(d) Use the clause at 252.247-7025, Reflagging or Repair Work, in all time charter solicitations and contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(c).

### PART 249—TERMINATION OF CONTRACTS

#### 249.7003 [Amended]

56. Section 249.7003 is amended by inserting in paragraph (b)(1) the word "major" between the words "which" and "defense;" by revising in paragraph (d)(2) introductory text the number "90" to read "60;" by revising in paragraph (b)(3) introductory text the number "90" to read "60;" and by removing in paragraph (b)(3) introductory text the word "provided."

### PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

57. Section 251.102 is amended to revise paragraph (e) introductory text and to add a new paragraph (f) to read as follows:

#### 251.102 Authorization to use Government supply sources.

(e) Use the format in Table 51-1, Authorization to Purchase from Government Supply Sources. Specify the terms of the purchase, including contractor acceptance of any Government materiel, payment terms, and the addresses required by paragraph (f) of the clause at 252.251-7000, Ordering from Government Supply Sources.

\* \* \* \* \*

(f) The authorizing agency shall also be responsible for promptly considering requests of the DoD supply source for authority to refuse to honor requisitions from a contractor which is indebted to the DoD and has failed to pay proper invoices in a timely manner.

\* \* \* \* \*

58. Section 251.105 is added to read as follows:

#### 251.105 Payment for shipments.

Contractor payments for purchases from DoD supply sources are due within 30 days of the date of a proper invoice (see FAR 32.902 for definition of "due

date” and “payment date;” also see FAR 32.905(e)).

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.209-7004 [Amended]**

59. and 60. Section 252.209-7004 is amended by revising in paragraph (b)(5) the symbol “PDUSD(A&T)(DPFC)” to read “OUSD(A&T)DP(FC).”

61. Section 252.219-7001 is amended by revising the clause date “(May 1994)” “(May 1995)”; and by revising paragraph (f)(2) to read as follows:

**252.219-7001 Notice of partial small business set-aside with preferential consideration for small disadvantaged business concerns.**

\* \* \* \* \*

(f) \* \* \*

(2) A manufacturer or regular dealer, which claims preference as a small disadvantaged business and submits an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

\* \* \* \* \*

62. Section 252.219-7002 is amended by revising the clause date “(MAY 1994)” to read “(MAY 1995)”; and by revising paragraph (c) to read as follows:

**252.219-7002 Notice of small disadvantaged business set-aside.**

\* \* \* \* \*

(c) *Agreement.*

A small disadvantaged business manufacturer or regular dealer, submitting an offer in its own name, agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States, except, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

\* \* \* \* \*

63. Section 252.219-7006 is amended by revising the clause date “(MAY 1994)” to read “(MAY 1995)”; and by revising paragraph (d)(2) to read as follows:

**252.219-7006 Notice of evaluation preference for small disadvantaged business concerns.**

\* \* \* \* \*

(d) \* \* \*

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns, historically black colleges or universities, or minority institutions in the United States, except, as provided in Section 8051 of Pub. L. 103-139 and Section 8012 of Pub. L. 103-335, for contracts awarded during fiscal years 1994 and 1995, a small disadvantaged business manufacturer or regular dealer owned by an Indian tribe, including an Alaska Native Corporation, agrees to furnish only end items manufactured or produced by small business concerns in the United States.

\* \* \* \* \*

**252.225-7009 [Amended]**

64. Section 252.225-7009 is amended to revise in paragraph (f)(2)(iv) the phrase “Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014” to read “Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York, 10305-5013.”

**252.225-7010 [Amended]**

65. Section 252.225-7010 is amended to revise in paragraph (e) introductory text the phrase “Chief, Customs Division, International Logistics Office, 201 Varick Street, New York, New York 10014” to read “Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York, 10305-5013.”

66. Section 252.225-7026 is amended by revising the clause date “(APR 1993)” to read “(MAY 1995)”; by revising paragraph (b)(3); by adding a new paragraph (b)(4); and by revising paragraph (d) to read as follows:

**252.225-7026 Reporting of contract performance outside the United States.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) The Contractor shall submit reports required by paragraph (a)(3) of this clause within 10 days of the end of each Government quarter to—Deputy Director of Defense Procurement (Foreign Contracting) OUSD(A&T)DP(FC) Washington, DC 20301-3060

(4) The Offeror/Contractor shall submit reports on DD Form 2139, Report of Contract Performance Outside the United States. Computer-generated reports are acceptable, provided the report contains all information required by DD Form 2139. Copies of DD Form 2139 may be obtained from the Contracting Officer.

(c) \* \* \*

(d) *Information required.*

Information to be reported on the part of this contract performed outside the United States (or outside the United States and Canada for reports required by paragraphs (a)(1) and (a)(2) of this clause) includes that for—

- (i) Subcontracts;
- (ii) Purchases; and
- (iii) Intracompany transfers when transfers originate in a foreign location.

67. Section 252.225-7035 is amended by revising the clause date “(JAN 1994)” to read “(MAY 1995)”; and by revising paragraph (c)(2)(ii) to read as follows:

**252.225-7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(ii) The Offeror certifies that the following supplies are qualifying country (except Canada) end products:

\* \* \* \* \*

68. Section 252.225-7036 is amended by adding a new Alternate I (MAY 1995) to read as follows:

**252.225-7036 North American Free Trade Agreement Implementation Act.**

\* \* \* \* \*

**ALTERNATE I (MAY 1995)**

As prescribed in 225.408(a)(4)(B)(ii), add the following paragraph (a)(7) to the basic clause, and substitute the following paragraph (c) in place of paragraph (c) of the basic clause:

(a)(7) “Canadian end product,” means an article that—

- (i) Is wholly the growth, product, or manufacturer of Canada; or
- (ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or non-NAFTA country end products in the Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a Canadian end product will be supplied requires the Contractor to supply a qualifying country end product or a Canadian end product, whichever is certified, or, at the Contractor’s option, a U.S. made end product.

**252.225-7037 [Amended]**

69. Section 252.225-7037 is amended to revise in paragraph (f)(2)(iv) the phrase "Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014" to read "Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, New York 10305-5013."

70. Section 252.225-7040 is added to read as follows:

**252.225-7040 Machine tool list.**

As prescribed in 225.7004-5(c), use the following provision:

**Machine Tool List (May 1995)**

The Government has identified those items listed as machine tool accessories which are not listed in the schedule as separate line items. The Offeror must also list any accessories to be provided which are not specifically required by the specifications. Where the machine tool accessory is not of U.S. or Canadian origin, as defined in the Preference for United States and Canadian Valves and Machine Tools clause of this solicitation, indicate the country in which the accessory was manufactured and the cost of the accessory.

Line Item No.	Accessory	Country of manufacture	Cost

(End of provision)

71. Section 252.235-7010 is added to read as follows:

**252.235-7010 Acknowledgment of support and disclaimer.**

As prescribed in 235.071(c), use the following clause:

**Acknowledgment of Support and Disclaimer (May 1995)**

(a) The Contractor shall include an acknowledgment of the Government's support in the publication of any material based on or developed under this contract, stated in the following terms: This material is based upon work supported by the (name of contracting agency(ies)) under Contract No. (Contracting agency(ies) contract number(s)).

(b) All material, except scientific articles or papers published in scientific journals, must, in addition to any notices or disclaimers by the Contractor, also contain the following disclaimer: Any opinions, findings and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the (name of contracting agency(ies)).

(End of clause)

72. Section 252.235-7011 is added to read as follows:

**252.235-7011 Final scientific or technical report.**

As prescribed in 235.071(d), use the following clause:

**Final Scientific or Technical Report (May 1995)**

The Contractor shall submit two copies of the approved scientific or technical report delivered under this contract to the Defense Technical Information Center (DTIC), Attn: DTIC-OC, Cameron Station, Alexandria, VA 22304-6145. The Contractor shall include a completed Standard Form 298, Report Documentation Page, with each copy of the report. For submission of reports in other than paper copy, contact the Defense Technical Information Center, Attn: DTIC-OC, Cameron Station, Alexandria, VA 22304-6145.

(End of clause)

**252.237-7022 [Amended]**

73. Section 252.237-7022 is amended by revising the clause date "(JUL 1994)" to read "(MAY 1995)" and by revising at their second occurrence the words "the local" to read "such."

74. Section 252.247-7021 is revised to read as follows:

**252.247-7021 Returnable containers other than cylinders.**

As prescribed in 247.305-70, use the following clause:

**Returnable Containers Other Than Cylinders (May 1995)**

(a) *Returnable container*, as used in this clause, includes reels, spools, drums, carboys, liquid petroleum gas containers, and other returnable containers when the Contractor retains title to the container.

(b) Returnable containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of \_\_\_\_\_ (insert number of days) calendar days after delivery to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of \$\_\_\_\_\_ (insert dollar amount for rental) per container per day, computed separately for containers for each type, size, and capacity, and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of the replacement value per container specified in paragraph (c) of this clause.

(c) For each container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid for that container:

(Insert the container types, sizes, capacities, and associated replacement values.)

These containers shall become Government property.

(d) If any lost container is located within \_\_\_\_\_ (insert number of days) calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the container was delivered to the Contractor.

(End of clause)

75. Section 252.247-7025 is revised to read as follows:

**252.247-7025 Reflagging or repair work.**

As prescribed in 247.573(d), use the following clause:

**Reflagging or Repair Work (May 1995)**

(a) *Definition.*  
*Reflagging or repair work*, as used in this clause, means work performed on a vessel—

- (1) To enable the vessel to meet applicable standards to become a vessel of the United States; or
- (2) To convert the vessel to a more useful military configuration.

(b) *Requirement.* Unless the Secretary of Defense waives this requirement, reflagging or repair work shall be performed in the United States or its territories, if the reflagging or repair work is performed—

- (1) On a vessel for which the Contractor submitted an offer in response to the solicitation for this contract; and
- (2) Prior to acceptance of the vessel by the Government.

(End of clause)

76. Section 252.249-7002 is amended by revising the clause date "(MAY 1994)" to read "(MAY 1995)" and by revising paragraph (c)(1) to read as follows:

**252.249-7002 Notification of proposed program termination or reduction.**

\* \* \* \* \*

(c) \* \* \*

(1) Each employee representative of the Contractor's employees whose work is related to the program and who may be impacted in the event of a termination or substantial reduction; or

\* \* \* \* \*

77. Section 252.251-7000 is amended by revising the clause date "(DEC 1991)" to read "(MAY 1995)"; by revising paragraph (d)(4); and by adding a new paragraph (f) to read as follows:

**252.251-7000 Ordering from Government supply sources.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) Pay invoices from Government supply sources promptly. For purchases made from DoD supply sources, this means within 30 days of the date of a proper invoice (see also Defense Federal Acquisition Regulation Supplement (DFARS) 251.105). For purposes of computing interest for late Contractor payments, the Government's invoice is deemed to be a demand for payment in accordance with the Interest clause of this contract. The Contractor's failure to pay may also result in the DoD supply source refusing to honor the requisition (see DFARS 251.102(f)) or in the Contracting Officer terminating the Contractor's authorization to use DoD supply sources. In the event the Contracting Officer decides to terminate the authorization due to the Contractor's failure to pay in a timely manner, the Contracting Officer shall provide the Contractor with prompt written notice of the intent to terminate the authorization and the basis for such action. The Contractor shall have 10 days after receipt of the Government's notice in which to provide additional information as to why the authorization should not be terminated. Such termination shall not provide the Contractor with an excusable delay for failure to perform or complete the contract in accordance with the terms of the contract, and the Contractor shall be solely responsible for any increased costs.

(e) \* \* \*

(f) Government invoices shall be submitted to the Contractor's billing address, and Contractor payments shall be sent to the Government remittance address specified below:

Contractor's Billing Address (include point of contact and telephone number):

Government Remittance Address (include point of contact and telephone number):

(End of clause)

**PART 253—FORMS**

78. Section 253.209-1 is amended by revising paragraph (a)(i)(E) to read as follows:

**253.209-1 Responsible prospective contractors.**

(a) \* \* \*

(i) \* \* \*

(E) *Accounting system and related internal controls.* An assessment by the auditor of the adequacy of the prospective contractor's accounting system and related internal controls as defined in 242.7501, Definition. Normally, a contracting officer will request an accounting system review when soliciting and awarding cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion.

\* \* \* \* \*

**253.215-70 [Amended]**

79. At the end of section 253.215-70, Form 253.303-2139, Report of Contract Performance Outside the United States, is added in numerical order to the DFARS Form List.

**Appendix C to Chapter 2**

80. Appendix C to Chapter 2, Section C-207.5 is amended by revising paragraph (b) to read as follows:

C-207.5 Subcontractor responsibility and vendor performance rating system (IIG5).

(a) \* \* \*

(b) *Vendor performance rating systems.* Contractor vendor performance rating systems may be a valuable element in the contractor's selection of subcontractors that offer the greatest value to the Government. State in the report whether the contractor has a vendor rating system. If the contractor has a system in place, evaluate its effectiveness in selecting sources. Consider whether the system—

- (1) Allows consistency of comparisons among competing subcontractors;
- (2) Protects rating information;
- (3) Provides appropriate documentation for each element rated;
- (4) Allows adequate opportunities for new subcontractors to compete;
- (5) Provides for evaluations by appropriate functional areas; and
- (6) Is kept current and accurate.

[FR Doc. 95-13061 Filed 6-2-95; 8:45 am]

BILLING CODE 3810-01-M

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1831 and 1852**

RIN 2700-AB82

**Revision to NASA FAR Supplement Coverage on Precontract Costs**

**AGENCY:** Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations pertaining to precontract costs to specify the content of letters to contractors which authorize the incurrence of precontract costs, make clear the circumstances when precontract costs would be appropriate, and clarify that precontract costs are not allowable unless the clause "Precontract Costs" is included in the contract. In addition, the rule revises the prescription for the clause to allow its use in other than cost-reimbursement contracts. Also, the rule changes the title of that clauses from "Date of Incurrence of Costs" to "Precontract Costs" to more accurately reflect its purpose.

**EFFECTIVE DATE:** July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Le Cren, (202) 358-0444.

**SUPPLEMENTARY INFORMATION:**

**Background**

NASA proposed to amend its regulation on precontract costs, 59 FR 33254, 6/28/94. The rule is intended to provide standardization in the contents of the Agency's precontract cost letters to contractors, make clear the circumstances when precontract costs would be appropriate, clarify that the precontract cost clause is required in the contract in order for such costs to be allowable, and changes the title of the precontract cost clause to more accurately reflect its purpose.

The only public comments submitted were from an industry association. The association considers the FAR coverage to be adequate and "strongly opposes the proposed revision as an unwarranted and unnecessary restriction of the FAR provisions governing precontract costs." NASA's coverage differs from the FAR cost principle by making precontract costs unallowable unless the NASA precontract costs clause is included in the contract.

The public comments were reviewed and considered. The proposed rule was determined to be compliant with the FAR as it utilizes advance agreements whose terms are incorporated in the affected contracts. In addition, the rule prevents the types of litigation identified by the commenter. Furthermore, NASA believes the need to incur precontract costs should be disclosed and only incurred when authorized.

Although no change was made to the proposed rule based on the public comments, the rule has been revised as a result of our review due to the public comments. The final rule eliminates the need for the Precontract Costs clause in firm-fixed-price contracts and fixed-price contracts with an economic price adjustment. The background for the proposed rule stated that the clause was appropriate for the firm-fixed price contracts as the FAR Part 31 cost principles would apply in the case of a termination. While that is true, FAR 49.113, Cost principles, also states that the Part 31 cost principles are subject to the general principles of 49.201. That section states that the primary objective of a termination settlement is to compensate the contractor fairly for the work done and the parties may agree on a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising that amount. Therefore, the cost principles are viewed as a guide and not required for reaching an agreement by cost element, eliminating

the need of a precontract cost clause for such contracts.

### Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

### List of Subjects in 48 CFR Parts 1831 and 1852

Government procurement.

#### Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1831 and 1852 are amended as follows.

1. The authority citation for 48 CFR Parts 1831 and 1852 continues to read as follows:

**Authority:** 41 U.S.C. 2473(c)(1).

### PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 1831.205–32 is revised to read as follows:

#### 1831.205–32 Precontract costs.

(a) The authorization of precontract costs is not encouraged and shall be granted only when there will be a sole source award or a single offeror has been selected for negotiations as the result of a competitive procurement, the criteria at FAR 31.205–32 are met, and a written request and justification has been submitted to and approved by the procurement officer. The authorization of precontract cost shall not apply to firm-fixed-price contracts and fixed-price contracts with economic price adjustment. The justification shall:

(1) Substantiate the necessity for the contractor to proceed prior to contract award,

(2) Specify the start date of such contractor effort,

(3) Identify the total estimated time of the advanced effort, and

(4) Specify the cost limitation.

(b) Authorization to the contractor to incur precontract costs shall be in writing and shall:

(1) Specify the start date for incurrence of such costs,

(2) Specify a limitation on the total amount of precontract costs which may be incurred,

(3) State that the costs are allowable only to the extent they would have been if incurred after the contract had been entered into, and

(4) State that the Government is under no obligation to reimburse the contractor for any costs unless a contract is awarded.

(c) Precontract costs shall not be allowable unless the clause at 1852.231–70, Precontract Costs, is included in the contract.

3. Section 1831.205–70 is revised to read as follows:

#### 1831.205–70 Contract clause.

The contracting officer shall insert the clause at 1852.231–70, Precontract Costs, in contracts for which specific coverage of precontract costs is authorized under 1831.205–32.

4. Section 1852.231–70 is revised to read as follows:

#### 1852.231–70 Precontract costs.

As prescribed in 1831.205–70, insert the following clause:

#### Precontract Costs

(June 1995)

The contractor shall be entitled to reimbursement for costs incurred on or after \_\_\_\_\_ in an amount not to exceed \$ \_\_\_\_\_ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

[FR Doc. 95–13631 Filed 6–2–95; 8:45 am]

BILLING CODE 7510–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 672

[I.D. 090892B]

RIN 0648–AD44

### Groundfish of the Gulf of Alaska; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to a final regulation (I.D. 090892B) that was published on Wednesday, October 5, 1994. The regulation established standard groundfish product types and standard product recovery rates (PRRs) for purposes of managing the groundfish fisheries off Alaska.

**EFFECTIVE DATE:** November 4, 1994.

**FOR FURTHER INFORMATION CONTACT:** Catherine Belli, 301-713-2341.

**SUPPLEMENTARY INFORMATION:** On October 5, 1994 (59 FR 50699), NMFS published a final rule establishing standard groundfish product types and standard PRRs for the groundfish fisheries off Alaska. The final rule was effective November 4, 1994. NMFS issued a correction to that rule on November 2, 1994 (59 FR 54841), adding amendatory instruction 3 that correctly amended § 672.20. The October 5, 1994, rule included Table 1 to § 672.20, but inadvertently omitted the amendatory instructions to add Table 1 to the section. This notice corrects this oversight and adds Table 1 to § 672.20.

### Correction of Publication

Accordingly, the publication on October 5, 1994 (59 FR 50699), of the final regulations (I.D. 090892B), which were the subject of FR Doc. 94–24637, is corrected as follows:

#### Table 1 to § 672.20 [Corrected]

On page 50702, before the beginning of Table 1 to § 672.20, amendatory instruction 3a. is added to read as follows:

“3a. Section 672.20 is amended by adding a new Table 1 at the end of § 672.20 to read as follows:”.

Dated: May 30, 1995

**Rolland A. Schmitt,**

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 95–13684 Filed 6–2–95; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register

Vol. 60, No. 107

Monday, June 5, 1995

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 9 CFR Part 201

RIN 0590-AA09

#### Regulations and Statements of General Policy Issued Under the Packers and Stockyards Act: Scales & Weighing, Restrictions of Competition, Records, Packer Financial, Packer-Custom Feeding and Dealer/Order Buyer Arrangements, Meat Packer Sales and Purchase Contracts, Gifts to Government Employees, and Packer/Dealer Service Charges

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Proposed rules; review of existing regulations.

**SUMMARY:** The Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, is currently reviewing all regulations and policy statements issued under the provisions of the Packers and Stockyards (P&S) Act. Review of 20 regulations and statements of general policy, which have been identified as Group II, has been completed. As a result of the review, this document proposes to modify six trade practice regulations and retain seven regulations and seven statements of general policy in their present form.

**DATES:** Comments must be submitted on or before August 4, 1995.

**ADDRESSES:** Comments may be mailed to the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, Room 3039 South Building, U.S. Department of Agriculture, Washington, D.C. 20250-2810. Comments received may be inspected during normal business hours in the Office of the Deputy Administrator.

**FOR FURTHER INFORMATION CONTACT:** Dan VanAckeren, Acting Director, Livestock Marketing Division, (202) 720-6951, or

Tommy Morris, Director, Packer and Poultry Division, (202) 720-7363.

**SUPPLEMENTARY INFORMATION:** Advance Notice of Proposed Rulemaking was published in the **Federal Register** (57 FR 42515) on September 15, 1992. Comments were solicited, at that time, concerning the relevance and importance of each regulation and statement of general policy to today's livestock, meat, and poultry industries, and which sections should be retained, modified or removed. To complete the review process, the rules covered by the Advance Notice of Proposed Rulemaking were divided into three groupings and this document relates to those rules identified as Group II.

In response to a request for comments in the Advance Notice of Proposed Rulemaking, the Agency received a total of fourteen comments relating to the rules in Group II. Comments were received from five livestock producer and trade associations, two legal service groups representing producer and poultry grower associations, four poultry grower associations, two livestock marketing interests, and one livestock auction market.

Six comments were received recommending modification of § 201.49. This regulation requires that interested parties be furnished certain specified information in transactions that are based on the weight of livestock and live poultry. The generation, distribution, and maintenance of scale tickets is a necessary part of this process. One comment recommended a modification to the current regulations to specify that all scales, including those used to purchase livestock on a dressed weight basis, be equipped with printing devices. Five comments recommended that the current regulations be modified to require that scale tickets, similar to those required for livestock and poultry, be made a requirement for poultry feed delivered to growers where feed weight is part of the grower's compensation formula. The commenters proposed that the feed scale printing device print the time and date on the ticket. These same five commenters also recommended a modification to the existing regulations to emphasize the civil penalties of up to \$10,000 per livestock weighing offense that are currently available under section 203 of the P&S Act (7 U.S.C 193).

The same six commenters also proposed revision of § 201.71 which requires that all scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers be installed, maintained, and operated to insure accurate weights and requires that all scales used to weigh livestock and live poultry, with the exception of monorail scales, be equipped with a printing device.

The Agency proposes to amend subsection (a) of § 201.49 by modifying the last sentence to specifically state that all scales used to purchase livestock on a dressed weight basis be equipped with printing devices. The Agency also proposes to amend subsection (b) of § 201.49 to require weighmaster identification on executed poultry scale tickets that is uniform with identification required by livestock weighers. The Agency is considering addressing the issue of poultry feed weighing where feed weight is a part of the grower's compensation formula under a separate rulemaking.

The Agency adopts standards, specifications, and tolerances as approved by the National Institute of Standards and Technology (NIST) and printed in NIST Handbook 44. The Agency proposes to amend subsection (a) of § 201.71 to incorporate by reference the 1995 edition of NIST Handbook 44 to replace references to the currently adopted 1989 edition, as the 1995 handbook contains the most current standards, specifications, and tolerances approved by NIST. The Agency also proposes to amend subsection (b) of § 201.71 to specifically require that scales used to purchase livestock on a carcass weight basis be equipped with printing devices. The Agency is considering addressing the issue of poultry feed weighing where feed weight is a part of the grower's compensation formula under a separate rulemaking.

Section 201.55 requires that purchases and sales of livestock be made on the basis of actual weights and that any adjustments to the weights be fully and accurately explained on the accountings. The Agency proposes to amend § 201.55 by modifying the first sentence to include the purchase, sale, acquisition, and settlement of live poultry. This proposed change will provide uniform requirements for

livestock and live poultry. No comments were received concerning this section.

No comments were received concerning the modification of § 201.73-1. The Agency proposes a technical change to § 201.73-1 to more accurately reflect where forms are available and where they are to be filed.

Three comments were received concerning the modification of § 201.98. This regulation prohibits packers and dealers from charging commission, yardage, or other selling fees to livestock sellers. Of the three comments, one was received from each of the following: a trade association, a livestock auction market, and an agricultural cooperative. One comment recommended modifying the current regulation to exempt charges for services that are mandated by law or regulation from this prohibition. The other two comments recommended a modification that would only prohibit this practice if it resulted in anticompetitive behavior or was not disclosed to the seller.

The Agency proposes to amend § 201.98 by adding the wording, "unless the charge is for services mandated by law or statute", at the end of the last sentence of the regulation. This change would allow buyers to charge for services rendered at the time livestock is received, such as animal identification, provided the service is necessary to comply with statutory requirements.

No comments were received concerning the modification of § 201.108-1. This regulation consists of instructions for live poultry weighers that inform them of requirements and procedures which must be followed in order to assure accurate weighing of live poultry on vehicle scales.

The Agency proposes to amend and update § 201.108-1 by incorporating instructions for weighing live poultry on electronic scales with digital readouts. Currently, § 201.108-1 contains instructions for weighing live poultry on weighbeam and dial scales, but does not include electronic scales. We also propose to amend the regulation to assure uniformity of requirements for weighing livestock and poultry.

A review of the following regulations and statements of general policy has been completed and the Agency proposes to retain each in its present form:

§ 201.53 Persons subject to the Act not to circulate misleading reports about market conditions or prices.

§ 201.69 Furnishing information to competitor buyers.

§ 201.70 Restriction or limitation of competition between packers and dealers prohibited.

§ 201.73 Scale operators to be qualified.

§ 201.76 Reweighing.

§ 201.100 Records to be furnished poultry growers and sellers.

§ 201.200 Sale of livestock to a packer on credit.

§ 203.2 Statement of general policy with respect to the giving by meat packers of meat and other gifts to Government employees.

§ 203.4 Statement with respect to the disposition of records by packers, live poultry dealers, stockyard owners, market agencies and dealers.

§ 203.7 Statement with respect to meat packer sales and purchase contracts.

§ 203.15 Trust benefits under sections 206 and 207 of the Act.

§ 203.16 Mailing of checks in payment for livestock purchased for slaughter, for cash and not on credit.

§ 203.18 Statement with respect to packers engaging in the business of custom feeding livestock.

§ 203.19 Statement with respect to packers engaging in the business of livestock dealers or buying agencies.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The absence of any of the regulations would be detrimental to the industry and could result in increased litigation.

Comments received pursuant to the Advance Notice of Proposed Rulemaking concerning §§ 203.2, 203.15 and 203.16 were generally in support of retaining each in its present form. No comments were received concerning §§ 201.69, 201.200 and 203.7.

Five comments were received concerning modification of § 201.53. This regulation prohibits packers, live poultry dealers, stockyard owners, market agencies, or dealers from knowingly making, issuing, or circulating false or misleading reports concerning market conditions or prices on the sale of livestock, meat, or live poultry. One comment came from a legal service group representing a poultry grower association and four from poultry grower associations recommending that the regulation be broadened to prohibit the distribution of false or misleading information about the income contract growers receive or could expect to receive in a contract growing arrangement. The Agency is not proposing any changes in the requirements of § 201.53 and believes the regulation, as written, adequately specifies that the Agency considers it an unfair practice under section 202 of the P&S Act to disseminate false or misleading market information.

Two comments were received concerning modification of § 201.70.

This regulation requires that packers and dealers operate their livestock buying operations in competition with, and independently of, one another to avoid a restriction of competition. The comments came from a trade association and a livestock auction market and recommended that the regulation be limited to cover only those situations that result in anticompetitive behavior. The Agency is not proposing any changes in the current requirements of § 201.70, as the regulation, coupled with the provisions of the P&S Act, is adequate to ensure that the intent of the Act is not compromised.

Five comments were received concerning modification of § 201.73. This regulation requires that stockyard owners, market agencies, dealers, packers, and live poultry dealers employ only qualified persons to operate their scales and requires that such employees operate the scales in accordance with the regulations. One comment came from a legal service group representing a poultry grower association and four from poultry grower associations recommending that the regulation be broadened to require live poultry dealers to employ qualified weighmasters to weigh poultry feed delivered to contract poultry growers. The same five commentators recommended that § 201.76, which requires stockyard owners, market agencies, dealers, packers and live poultry dealers to reweigh livestock, livestock carcasses, or live poultry on request of any authorized representative of the Secretary, be broadened to include poultry feed in the reweighing requirements. The Agency is proposing no changes to § 201.73 or § 201.76. The Agency is considering addressing the issue of poultry feed weighing where feed weight is a part of the grower's compensation formula under a separate rulemaking.

Seven comments were received concerning modification of § 201.100. This regulation requires that poultry growing agreements be written and that they contain essential specified elements. It also provides that growers are entitled to receive documents necessary for independent verification of their settlement. Two comments were received from legal service groups representing poultry producers, four from poultry growers associations, and one from a producer association. Five of the seven comments recommended adding language to subsection (d) to prohibit employees of live poultry dealers who also raise poultry under growing arrangements with the dealer by whom they are employed from being included in a grouping or ranking of

poultry growers. One comment recommended expanding subsection (a) to include livestock. The seventh comment recommended that this regulation be diligently enforced to ensure that growers have sufficient information to understand their settlement checks. Past investigations of growout arrangements have not shown that employees of a live poultry dealer, who also happen to raise poultry, have an inherent advantage over other contract growers that would warrant prohibiting employee and nonemployee contract growers from being grouped together. Further, the Agency is aware that more and more livestock is being produced under various contractual arrangements, however, other provisions of the statute and regulations have been sufficient to address concerns thus far. Therefore, the Agency is not proposing any changes in § 201.100.

Six comments were received concerning modification of § 203.4. This policy statement notifies persons subject to the P&S Act that certain records may be disposed of after a specific period of time. It also states that the Deputy Administrator may require that records should be retained for a longer period pending completion of an investigation. The policy statement advises that if records are disposed of before the specified periods, the Agency will consider taking formal action. One comment was received from a legal service group representing a poultry grower association, four from poultry grower associations, and another from a producers association. One comment recommended no change and the other five recommended modifying the policy statement to require that records be maintained for a 5-year period. This section has not caused problems in administering the provisions of the P&S Act. Further, the Agency has the authority to require that records be retained for longer periods when deemed necessary.

Four comments were received concerning modifications of § 203.18. This policy statement notifies packers that ownership or operation of custom feedlots may, under certain circumstances, result in a conflict of interest or anticompetitive violations. It suggests packers consult with the Agency before commencing such activity. All four comments were from producer associations. Two comments recommend section (c) be modified to require consultation with the Agency prior to acquiring, merging with, or operating a custom feedlot. The two other comments recommend a strict prohibition against packers owning or operating custom feedlots. While the

Agency continues to be concerned about potential conflicts of interest, current arrangements do not appear to have created conflicts warranting a per se prohibition. Also, current authority under the P&S Act is sufficient to allow the Agency to review any arrangement, at any time that it appears that it may result in an unfair practice or advantage. For these reasons, no changes are being proposed in § 203.18 at this time. The Agency will continue to evaluate these types of arrangements on a case-by-case basis.

Four comments suggested modifications to § 203.19. This policy statement notifies packers that operating as a livestock dealer or buying agency may, under certain circumstances, result in violations of the P&S Act. All four comments were from producer associations. Two comments recommend subsection (c)(1) be modified to require consultation with the Agency prior to operating as a market agency or dealer. Another comment suggested the policy statement be broadened to place the burden of proof on the packer to prove such ownership does not restrain trade. The fourth comment recommends packers be prohibited from operating as dealers or buying agencies. The Agency has not proposed changes in § 203.19 at this time, but will continue to evaluate each such arrangement on a case-by-case basis. As a practical matter, most packers consult with the Agency before entering into such arrangements. Amending this rule to require such consultation does not appear necessary. Attempting to shift the burden of proof that the arrangement does not restrain trade would not relieve the Agency of the responsibility to investigate and make a factual determination.

The proposed changes in §§ 201.49, 201.55, 201.71, 201.73-1, 201.98, and 201.108-1 do not impose or change any recordkeeping or information collection requirements. Existing requirements in these regulations have been previously approved by OMB under Control No. 0590-0001.

As provided by the Regulatory Flexibility Act, it is hereby certified that these proposed amended rules will not have a significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While these proposed amended rules impact small entities, they will not have a significant economic impact on any entity, large or small. The primary effect

of the changes in rules §§ 201.49 and 201.71 is to require that when livestock is purchased on the basis of carcass weight the scale used on such purchases be equipped with a printer. The primary effect of the rule change in § 201.55 is to require that when poultry is bought, sold, acquired, or settled on a weight basis, then the actual weight on the scale ticket be used for such purposes, as is currently required for livestock. The primary effect of the rule change in § 201.73-1 is to make a technical change in the name of the Agency pursuant to Pub. L. 103-354, the Federal Crop Insurance Reform and the Department of Agriculture's Reorganization Act of 1994. The primary effect of the rule change in § 201.98 is to allow packers and dealers to charge for services that are mandated by law or statute. The primary effect of the rule change in § 201.108-1 is to update the regulation.

This rule has been determined to be not significant for purposes of executive order 12866 and therefore has not been reviewed by OMB. These amendments do not impose any new paperwork requirements and do not have implications of Federalism under the criteria of E.O. 12612.

These proposed amendments have been reviewed under E.O. 12778, Civil Justice Reform, and are not intended to have retroactive effect. These amendments will not preempt state or local laws, regulations, or policies unless they present an irreconcilable conflict with this amendment. Prior to judicial challenge of the amendment to rule, a party must first be found by the Secretary to be in violation of the P&S Act and in violation of the accompanying regulations. Second, the party must appeal that finding and the validity of the regulation to the Secretary in the course of the administrative proceeding. Only after taking these steps, the party may challenge the regulation in a court of competent jurisdiction.

#### **List of Subjects in 9 CFR Part 201**

Reporting and recordkeeping requirements, Stockyards, Trade practices.

Done at Washington, D.C. this 26th day of May 1995.

**James R. Baker,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

For the reasons set forth in the preamble, the Grain Inspection, Packers and Stockyards Administration proposes to amend 9 CFR part 201 as follows:

1. The authority citation for part 201 continues to read as follows:

**Authority:** 7 U.S.C. 204, 228; 7 CFR 2.17(e), 2.56.

2. Revise § 201.49 to read as follows:

**§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock and live poultry.**

(a) Livestock. When livestock is weighed for the purpose of purchase or sale, a scale ticket shall be issued which shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. In instances where the weight values are automatically recorded directly on the account of purchase, account of sale or other basic record, this record may serve in lieu of a scale ticket. When livestock is purchased on a carcass weight or carcass grade and weight basis, the hot carcass weights shall be recorded using a scale equipped with a printing device, and such printed weights shall be retained as part of the person or firm's business records to substantiate settlement on each transaction. Scale tickets issued under this section shall show:

- (1) The name and location of the agency performing the weighing service;
- (2) The date of the weighing;
- (3) The name of the buyer and seller or consignor, or a designation by which they may be readily identified;
- (4) The number of head;
- (5) Kind of livestock;
- (6) Actual weight of each draft of livestock; and
- (7) The name, initials, or number of the person who weighed the livestock, or if required by State law, the signature of the weigher.

(b) Poultry. When live poultry is weighed for the purpose of purchase, sale, acquisition, or settlement by a live poultry dealer, a scale ticket shall be issued which shall show:

- (1) The name of the agency performing the weighing service;
- (2) The name of the live poultry dealer;
- (3) The name and address of the grower, purchaser, or seller;
- (4) The name or initials or number of the person who weighed the poultry, or if required by State law, the signature of the weigher;
- (5) The location of the scale;
- (6) The gross weight, tare weight, and net weight;
- (7) The date and time gross weight and tare weight are determined;
- (8) The number of poultry weighed;
- (9) The weather conditions;
- (10) Whether the driver was on or off the truck at the time of weighing; and
- (11) The license number of the truck or the truck number; provided, that

when live poultry is weighed on a scale other than a vehicle scale, the scale ticket need not show the information specified in paragraphs (b)(9)–(11) of this section. Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be furnished to the grower, purchaser, or seller, and one copy shall be furnished to or retained by the live poultry dealer.

(Approved by the Office of Management and Budget under control number 0590–0001)

3. Revise § 201.55 to read as follows:

**§ 201.55 Purchases, sales, acquisitions, and settlements to be made on actual weights.**

When livestock or live poultry is bought, sold, acquired, or settled on a weight basis, settlement therefor shall be on the basis of the actual weight on the scale ticket. If the actual weight used is not obtained on the date and at the place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statements issued. Any adjustment to the actual weights shall be fully and accurately explained on the accountings, bills, or statements issued and records shall be maintained to support such adjustment.

(Approved by the Office of Management and Budget under control number 0590–0001)

4. Revise § 201.71 (a) and (b) to read as follows:

**§ 201.71 Scales, accurate weights, repairs, adjustments or replacements after inspection.**

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, or live poultry for the purpose of purchase, sale, acquisition, or settlement shall be installed, maintained, and operated to insure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1995 edition of National Institute of Standards and Technology Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on [insert date of approval]. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This handbook is for

sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20408.

(b) All scales used by stockyard owners, market agencies dealers, packers, and live poultry dealers to weigh livestock or live poultry for the purpose of purchase, sale, acquisition or settlement and all scales used for the purchase, sale, acquisition, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall be used for recording weight values on a scale ticket or other document used for this purpose.

\* \* \* \* \*

5. Revise § 201.73–1 introductory text to read as follows:

**§ 201.73–1 Instructions for weighing livestock.**

Stockyard operators, market agencies, dealers, and packers who operate scales on which livestock is weighed in purchase or sales transactions are responsible for the accurate weighing of such livestock. They shall supply copies of the instructions in this section to all persons who perform weighing operations for them and direct such person to familiarize themselves with the instructions and to comply with them at all times. This section shall also apply to any additional weighers who are employed at any time. Weighers must acknowledge their receipt of these instructions and agree to comply with them, by signing in duplicate, P&SA Form 215 provided by the Packers and Stockyards Programs. One copy of the form is to be filed with a regional office of the Packers and Stockyards Programs and the other retained by the agency employing the weighers.

\* \* \* \* \*

6. Revise § 201.98 to read as follows:

**§ 201.98 Packers and dealers not to charge, demand, or collect commission, yardage, or other services charges.**

No packer or dealer shall, in connection with the purchase of livestock in commerce, charge, demand, or collect from the seller of the livestock any compensation in the form of commission, yardage, or other service charge unless the charge is for services mandated by law or statute and is not inconsistent with the provisions of the Act.

7. Revise § 201.108–1 introductory paragraph and paragraphs, (a) and (c)–(f) to read as follows:

**§ 201.108-1 Instructions for weighing live poultry.**

Live poultry dealers who operate scales on which live poultry is weighed for purposes of purchase, sale, acquisition, or settlement are responsible for the accurate weighing of such poultry. They shall supply copies of the instructions in this section to all persons who perform weighing operations for them and direct such persons to familiarize themselves with the instructions and to comply with them at all times. This section shall also apply to any additional weighers who are employed at any time. Weighers must acknowledge their receipt of these instructions and agree to comply with them by signing in duplicate, on a form provided by the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration. One copy of this form is to be filed with a regional office of the Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration and the other copy retained by the agency employing the weighers. The following instructions shall be applicable to the weighing of live poultry on all scales, except that paragraph (c)(1) of this section is only applicable to the weighing of live poultry on vehicle scales.

(a) **Balancing the empty scale.** (1) The scale shall be maintained in zero balance at all times. The empty scale shall be balanced each day before weighing begins and thereafter its zero balance shall be verified before any poultry is weighed. In addition, the zero balance of the scale shall be verified whenever a weigher resumes weighing duties after an absence from the scale.

(2) Before balancing the empty scale, the weigher shall notify parties outside the scale house of his intention and shall assure himself that no persons or vehicles are in contact with the platform. When the empty scale is balanced and ready for weighing, he shall so indicate by appropriate signal.

(3) Weighbeam scales shall be balanced by first seating each poise securely in its zero notch and then moving the balance ball to such position that a correct zero balance is obtained. A scale equipped with a balance indicator is correctly balanced when the indicator comes to rest in the center of the target area. A scale not equipped with a balance indicator is correctly balanced if the weighbeam, when released at the top or bottom of the trig loop, swings freely in the trig loop in such manner that it will come to rest at the center of the trig loop.

(4) Dial scales shall be balanced by releasing all drop weights and operating

the balance ball or other balancing device to obtain a correct zero balance. The indicator must visibly indicate zero on the dial reading face and the ticket printer must record a correct zero balance. "Balance tickets" shall be filed with other scale tickets issued on that date.

(5) Electronic digital scales should be properly warmed up before use. In most cases it is advisable to leave the electric power on continuously. The zero balance shall be verified by recording the zero balance on a scale ticket. The main indicating element and the remote visual weight display shall indicate zero when the balance is verified. The proper procedure for balancing this type of scale will vary according to the manufacture. Refer to the operator's manual for specific instructions.

(6) A balance ball or other balancing device shall be operated only when balancing the empty scale and shall not be operated at any other time or for any other purpose.

(7) The time at which the empty scale is balanced or its zero balance verified shall be marked on scale tickets or other permanent records.

\* \* \* \* \*

(c) **Weighing the load.** (1) Vehicle scales used to weigh live poultry shall be of sufficient length and capacity to weigh an entire vehicle as a unit; provided, that a trailer may be uncoupled from a tractor and weighed as a single unit. Before weighing a vehicle, either coupled or uncoupled, the weigher shall assure himself that the entire vehicle is on the scale platform and that no persons are on the scale platform.

(i) On a weighbeam scale with a balance indicator the weight of a vehicle shall be determined by moving the poises to such positions that the indicator will come to rest within the central target area.

(ii) On a weighbeam scale without a balance indicator the weight shall be determined by moving the poises to such positions that the weighbeam, when released from the top or bottom of the trig loop, will swing freely in the trig loop and come to rest at the approximate center of the trig loop.

(iii) On a dial scale the weight of a vehicle is indicated automatically when the indicator revolves around the dial face and comes to rest.

(iv) On an electronic digital scale the weight of a vehicle is indicated automatically when the weight value indicated is stable.

(2) The correct weight is the value in pounds indicated by a weighbeam, dial or digital scale when a stable load

balance is obtained. In any case, the weigher should concentrate his attention upon the beam tip, balance indicator, dial or digital indicator while weighing and not concern himself with reading the visible weight indications until a stable load balance is obtained. On electronic digital scales, the weigher should concentrate on the pulsing or flickering of weight values to assure that the unit indicates a stable weight before activating the print button.

(d) **Recording the weight.** (1) The gross or tare weight shall be recorded immediately after the load balance is obtained and before any poises are moved or load removed from the scale platform. The weigher shall make certain that the printed weight record agrees with the weight value visibly indicated on the weighbeam, dial or digital indicator when correct load balance is obtained. The weigher shall also assure that the printed weight value is sufficiently distinct and legible.

(2) The weight printing device on a scale shall be operated only to produce a printed or impressed record of the weight while the load is on the scale and correctly balanced. If the weight is not printed clearly and correctly, the ticket shall be marked void and a new one printed before the load is removed from the scale.

(e) **Weigher's responsibilities.** (1) The primary responsibility of a weigher is to determine and record the true weight of live poultry without prejudice or favor to any person or agency and without regard for poultry ownership, price, condition, shrink, or other considerations. A weigher shall not permit the representations or attitudes of any persons or agencies to influence his judgment or action in performing his duties.

(2) Scale tickets issued shall be serially numbered and used in numerical sequence. Sufficient copies shall be executed to provide a copy to all parties to the transaction. Unused scale tickets or those which are partially executed shall not be left exposed or accessible to other parties. All such tickets shall be kept under lock when the weigher is not at his duty station.

(3) Accurate weighing and weight recording require that a weigher shall not permit his operations to be hurried to the extent that inaccurate weights or incorrect weight records may result. The gross, tare and net weights must be determined accurately to the nearest minimum graduation. Manual operations connected with balancing, weighing, and recording shall be performed with the care necessary to prevent damage to the accurately machined and adjusted parts of

weighbeams, poises, and printing devices. Rough handling of these parts shall be avoided.

(4) Poultry growers, live poultry dealers, sellers, or others having legitimate interest in a load of poultry are entitled to observe the balancing, weighing, and recording procedures. A weigher shall not deny such persons that right or withhold from them any information pertaining to the weight. He shall check the zero balance of the scale or reweigh a load of poultry when requested by such parties or duly authorized representatives of the Administrator.

(f) General precautions. (1) The poises of weighbeam scales are carefully adjusted and sealed to a definite weight at the factory and any change in that weight seriously affects weighing accuracy. A weigher, therefore, shall observe if poise parts are broken, loose or lost or if material is added to a poise and shall report any such condition to his superior or employer. Balancing or weighing shall not be performed while a scale ticket is in the slot of a weighbeam poise.

(2) Stops are provided on scale weighbeams to prevent movement of poises back of the zero graduation when balancing or weighing. When the stops become worn or broken and allow a poise to be set behind the zero position, this condition must be reported by the weigher to his superior or employer and corrected without delay.

(3) Motion detection circuits are a part of electronic scales. They are designed to prevent the printing of weight values if the load has not stabilized within prescribed limits. The weighmaster's duty is to print the actual weight of the load within these limits. This requires printing the actual weight of the load, not one of the other weights that may be within the motion detection limits.

(4) Foreign objects or loose material in the form of nuts, bolts, washers, or other material on any part of the weighbeam assembly, including the counter-balance hanger or counter-balance weights, are potential sources of weighing error. Loose balancing material must be enclosed in the shot cup of the counter-balance hanger and counter-balance weights must not be of the slotted type which can readily be removed.

(5) Whenever, for any reason, a weigher has reason to believe that a scale is not functioning properly or not yielding correct weight values, he shall discontinue weighing, report the facts to the parties responsible for scale maintenance and request inspection, test or repair of the scale.

(6) When a scale has been adjusted, modified, or repaired in any manner

which can affect the accuracy of weighing or weight recording, the weigher shall not use the scale until it has been tested and inspected and found to be accurate.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 95-CE-29-AD]

#### Airworthiness Directives; Piper Aircraft Corporation Model PA-46-350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) Model PA-46-350P airplanes. The proposed action would require installing to the right of the manifold pressure gauge in full view of the pilot a placard that specifies manifold pressure limits, and incorporating a revision into the Limitations section of the Pilots' Operating Handbook (POH). After recent review of the Piper Model PA-46-350P powerplant data, the Federal Aviation Administration (FAA) determined that certain manifold pressure limitations should be incorporated. These limitations fall outside the normal continuous operation range of the engine, and therefore testing was not performed in this area during original type certification. The actions specified by the proposed AD are intended to prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits.

**DATES:** Comments must be received on or before August 11, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-29-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be

examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748; telephone (404) 305-7362; facsimile (404) 305-7348.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-CE-29-AD." The postcard will be date stamped and returned to the commenter.

##### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-29-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

##### Discussion

Following the Piper Model PA-46-350P airplane power plant review, the FAA realized that the vibration approval for the Hartzell propeller Model HC-12YR-1 (BF) and Lycoming engine model TIO-540-AE2A contains a manifold pressure restriction, as follows:

"Do not exceed 36 inches manifold pressure below 2,400 RPM and 32 inches manifold pressure below 2,300 RPM."

These restrictions fall outside the normal continuous operation range of the engine; therefore testing was not performed in this area during original type certification and the vibratory stress levels are unknown. The FAA has determined that (1) it is possible for the airplane to register these lower revolutions per minute (r.p.m.) combinations while operating at these high manifold pressure limits; and (2) the airplane operator should observe the limitations discussed above.

On March 29, 1995, Piper revised page 2-16 of Revision 14 (PR950329) to Report: VB-1332 of the PA-46-350P Pilots' Operating Handbook (POH). This POH revision references revised paragraph 2.35 regarding placards, specifically a placard containing manifold pressure limits. This revision is also referenced in Piper Service Bulletin No. 982, dated April 3, 1995.

After examining the circumstances and reviewing all available information related to the subject described above, the FAA has determined that AD action should be taken to prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Model PA-46-350P airplanes of the same type design, the proposed AD would require installing to the right of the manifold pressure gauge in full view of the pilot a placard that specifies manifold pressure limits. The proposed action would also require incorporating revised page 2-16 (dated March 29, 1995) of Revision 14 (PR950329) to Report: VB-1332 into the Limitations Section of the PA-46-350P POH. Piper Service Bulletin No. 982, dated April 3, 1995, contains the placard, and instructions on installing the placard and incorporating the POH revision. An owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) may perform these actions.

The compliance time of the proposed AD is presented in calendar time instead of hours time-in-service. Although the unsafe condition develops as result of airplane usage, it cannot develop unless the manifold pressure limits specified in the proposed action are exceeded. Therefore, to ensure that all owners/operators of the affected airplanes incorporate the manifold pressure limits in a reasonable amount

of time, a compliance based on calendar time is proposed.

The FAA estimates that 189 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this action, the only impact this action would have upon the public is the time it takes each owner/operator to install the placard and incorporate the POH revision.

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

**Piper Aircraft Corporation:** Docket No. 95-CE-29-AD.

*Applicability:* Model PA-46-350P airplanes, serial numbers 4622001 through 4622189, certificated in any category.

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

*Compliance:* Required within the next 2 calendar months after the effective date of this AD, unless already accomplished.

To prevent fatigue damage to the propeller caused by operating above certain manifold pressure limits, accomplish the following:

(a) Install to the right of the manifold pressure gauge in full view of the pilot a placard that specifies the following manifold pressure limits:

DO NOT EXCEED

36" MP

BELOW 2400 RPM

32" MP

BELOW 2300 RPM

Accomplish this installation in accordance with Piper Service Bulletin No. 982, dated April 3, 1995. This placard is included with the referenced service bulletin.

(b) Incorporate revised page 2-16 (dated March 29, 1995) of Revision 14 (PR950329) to Report: VB-1332 into the Limitations Section of the PA-46-350P Pilots' Operating Handbook, Piper Service Bulletin No. 982, dated April 3, 1995, contains the instructions for incorporating this POH revision.

(c) Installing the placard and incorporating the POH revision as required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2-160, College Park, Georgia 30337-2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(f) All persons affected by this directive may obtain copies of the POH revision, placard, and service information referred to herein upon request to Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 26, 1995.

**Henry A. Armstrong,**

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

[FR Doc. 95-13621 Filed 6-2-95; 8:45 am]

BILLING CODE 4910-13-U

## 14 CFR Part 39

[Docket No. 95-CE-23-AD]

### Airworthiness Directives; Beech Aircraft Corporation Models 60 and A60 Airplanes

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

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

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Beech Aircraft Corporation (Beech) Models 60 and A60 airplanes. The proposed action would require incorporating flight manual supplement revisions into the Airplane Flight Manual (AFM) that would specify a minimum airspeed for operating the affected airplanes in icing conditions. Reports of several incidents and accidents on the affected airplanes related to flight in icing conditions prompted the proposed action. The actions specified by the proposed AD are intended to prevent loss of control of the airplane because of the airplane traveling too slow in icing conditions.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel,

Attention: Rules Docket No. 95-CE-23-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bennett L. Sorensen, Flight Test Pilot, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4165; facsimile (316) 946-4407.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-CE-23-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-23-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

#### Discussion

The FAA has received reports of four icing-related occurrences (one incident and three fatal accidents) involving Beech Models 60 and A60 airplanes. Investigation of these occurrences revealed that, in two of the accidents, the airplane was traveling too slow for icing conditions.

The Model 60 and A60 Pilot's Operating Handbook/Airplane Flight Manual (POH/AFM), including the FAA-approved sections, contains no specification or precautionary performance advisory regarding the appropriate minimum airspeed to maintain while operating in icing conditions.

Beech recently issued AFM supplement "FLIGHT IN KNOWN ICING CONDITIONS", Revised: January 1995, part number (P/N) 60-590001-17. This AFM supplement establishes a minimum airspeed for operating Beech Models 60 and A60 airplanes in icing conditions.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent loss of control of the airplane because of the airplane traveling too slow in icing conditions.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Models 60 and A60 airplanes of the same type design, the proposed AD would require incorporating AFM supplement "FLIGHT IN KNOWN ICING CONDITIONS", Revised: January 1995, part number (P/N) 60-590001-17, into the applicable AFM.

The compliance time of the proposed AD is presented in calendar time instead of hours time-in-service. Although the unsafe condition develops as a result of airplane usage, it cannot develop unless the airplane travels too slow in icing conditions. Therefore, to ensure that all owners/operators of the affected airplanes incorporate the minimum airspeed in icing conditions flight manual supplement revisions in a reasonable amount of time, a compliance based on calendar time is proposed.

The FAA estimates that 243 airplanes in the U.S. registry would be affected by the proposed AD, that it would take less than 1 workhour per airplane to accomplish the proposed action. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this action, the

only cost impact upon the public is the time it takes to incorporate these AFM supplement revisions.

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

##### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

**Beech Aircraft Corporation:** Docket No. 95-CE-23-AD.

**Applicability:** Models 60 and A60 airplanes, serial numbers P-4 through P-246, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

**Compliance:** Required within the next 60 calendar days after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane because of the airplane traveling too slow in icing conditions, accomplish the following:

(a) Incorporate Airplane Flight Manual (AFM) supplement "FLIGHT IN KNOWN ICING CONDITIONS", Revised: January 1995, part number (P/N) 60-590001-17, into the AFM, P/N 60-590000-5 or P/N 60-590000-11, as applicable.

(b) Incorporating the AFM supplement "FLIGHT IN KNOWN ICING CONDITIONS", Revised: January 1995, part number (P/N) 60-590001-17, as required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

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

(e) All persons affected by this directive may obtain copies of the AFM revision referred to herein upon request to Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on May 26, 1995.

**Henry A. Armstrong,**

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

[FR Doc. 95-13626 Filed 6-2-95; 8:45 am]

BILLING CODE 4910-13-U

#### 14 CFR Part 234

[Docket No. 50053; Notice No. 95-7]

RIN 2137-AC67

#### Amendments to the On-time Disclosure Rule

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** Notice of proposed rulemaking and denial of petitions for emergency waiver.

**SUMMARY:** This document proposes to revise the on-time flight performance reporting requirements by re-instituting the exclusion of flights delayed or cancelled due to mechanical problems and seeks comments on the retroactive application of the proposal. This action is taken in response to recommendations made at the Federal Aviation Administration's Aviation Safety Conference and a petition for rulemaking by Northwest Airlines. This document denies the petitions of Northwest, Southwest and America West for an emergency waiver from the current on-time reporting requirements, and seeks comments concerning the collection of flight completion data and the filing frequency of the data collection.

**DATES:** Comments on the proposed rule must be received on or before July 5, 1995. Petitions for reconsideration of the staff action denying the emergency waiver must be received on or before June 15, 1995.

**ADDRESSES:** Comments should be directed to the Docket Clerk, Docket 50053, Room PL 401, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590-0001. Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket 50053. The postcard will be dated/time stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

**FOR FURTHER INFORMATION CONTACT:** Bernard Stankus or Jack Calloway, Office of Airline Statistics, DAI-10, Research and Special Programs Administration, 400 Seventh Street SW., Washington, D.C., 20590, (202) 366-4387 or 366-4383, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On September 9, 1987, the Department of Transportation (DOT or Department) issued a rule (52 FR 34056) which required the largest U.S. airlines to report their on-time performance for every domestic scheduled passenger flight operated to or from a reportable airport, with the exception of qualifying flights that were delayed 15 minutes or more or cancelled because of mechanical problems. A flight is considered on-time if it arrives less than 15 minutes after its published arrival time. The U.S. airlines covered by the reporting requirement are those generating at least 1 percent of the U.S. domestic scheduled-passenger revenues on a yearly basis. Reportable airports are those airports in the contiguous 48 states generating at least 1 percent of the domestic scheduled-passenger enplanements on an annual basis. In practice, all reporting airlines are voluntarily submitting data for their entire domestic scheduled-passenger operations. The purpose of the rule was to reduce airline flight delays and consumer dissatisfaction with airline service by providing a persuasive, market-based incentive for airlines to improve their quality of service and reliability of schedules. The reporting system developed for the administration of these reporting requirements was called the On-Time Flight Performance Reporting System.

Flights that were delayed 15 minutes or more, or cancelled, because of mechanical problems which were reported to the Federal Aviation Administration (FAA) under 14 CFR 121.703 or 121.705, were excluded from the reporting requirements. Mechanical delays included delays of the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same or substitute aircraft for which the delay was attributed to the initial mechanical problem. However, flights delayed less than 15 minutes because of a mechanical problem were included in the on-time performance data.

The issuance of the rule was in response to the Department's year-long study conducted in 1986-87 of airline operating performance at eight of the country's largest airports. This study included all flights, even those delayed or cancelled because of mechanical problems, and it showed that only 40 to 50 percent of the flights arrived on-time. In December 1994, the on-time flight performance for the 10 reporting airlines ranged from 73 to 84 percent. These figures are higher than the airlines'

actual performance, since mechanical delays and cancellations (estimated to impact about 4 percent of all flights) are excluded. Nonetheless, there has been marked improvement in airline on-time performance, to the benefit of consumers.

The improvement can be attributed to, among other things, more realistic flight scheduling by the airlines and improved traffic management by the FAA. The reporting requirements and the publication by the Department of each reporting airline's on-time performance created an incentive for the airlines to adjust scheduled flight times and make other changes to improve schedule reliability. These actions reduced unrealistic scheduling and resulted in improved on-time performance.

On December 4, 1992, the Department's Research and Special Programs Administration ("RSPA") issued a Notice of Proposed Rulemaking ("NPRM") (57 FR 58755; December 11, 1992) seeking public comments on a proposal to improve the on-time flight performance reporting requirements in 14 CFR Part 234. The Department proposed to eliminate the reporting exclusion for flights delayed or cancelled due to mechanical problems; to add the aircraft tail number, and wheels-off and wheels-on time for each flight reported; to define "cancelled flight," "discontinued flight," "diverted flight," and "extra-section flight"; to clarify the reporting requirement for a new flight; and, to delete references to obsolete offices.

Comments on the NPRM were received from Alaska Airlines, Inc. (Alaska), American Airlines, Inc. (American), America West Airlines, Inc. (America West), Delta Air Lines, Inc. (Delta), Northwest Airlines, Inc. (Northwest), Southwest Airlines Co. (Southwest), the Air Transport Association of America (ATA), and The Port Authority of New York and New Jersey (Port Authority).

The comments addressed safety, alternative data sources, the proprietary nature of aircraft tail number data, elimination of the rule in its entirety, the addition of new data items and definition changes.

Northwest, Southwest and America West opposed the elimination of the mechanical exclusion. They contended that including mechanicals in their on-time reports could compromise safety. They believed airline personnel might dispatch aircraft with mechanical problems to improve on-time performance.

ATA, American, Delta and the Port Authority filed in support of the proposed amendment. They contended

the elimination of the exclusion would not compromise safety.

Alaska stated the Department should initiate a rulemaking to see whether the existing on-time performance requirements should be eliminated in their entirety, rather than imposing additional reporting requirements.

On September 30, 1994, the Department issued a final rule that revised the reporting requirements in 14 CFR part 234 for the On-Time Flight Performance Reporting System (59 FR 49793, September 30, 1994). The rule change eliminated the exclusion of reporting flights delayed or cancelled due to mechanical problems and added three new data items (aircraft tail number, wheels-off time and wheels-on time) for each flight reported. These changes were effective on January 1, 1995. The initial monthly airline reports under the new requirements covering January 1995 operations were due at DOT on February 15, 1995. These reports have been filed. Since then February, March and April reports have also been filed.

One of the main purposes of the original rule, adopted on September 9, 1987, was to create a market-based incentive for airlines to improve their service quality and schedule reliability for consumers. The public availability of comparative data on airline service created this incentive. In issuing the September 30, 1994 final rule, the Department believed the elimination of the exclusion for mechanical delays and mechanical cancellations would provide better consumer information since aircraft dispatch reliability would now be a factor in airline on-time performance. At the same time, the new consumer reports would provide more complete information on an airline's operation.

A benefit of the revised reporting requirement was an 840 hour reduction in airline reporting burden. The elimination of a time-consuming sort to exclude mechanical delays and cancellations more than offset the increase in burden of adding three new data items.

The addition of the new data items—wheels-off and wheels-on times, and the identification of aircraft by tail number—enables the FAA to analyze air traffic operations and create system models for use in reducing enroute and ramp delays. The reporting of these three data items is not at issue in this notice, and airlines will continue to report these items.

**Aviation Safety Conference**

On January 9 and 10, 1995, the DOT and FAA sponsored an aviation safety

conference in Washington, D.C. The two-day conference, with over 1,000 attendees, focused on ways to improve safety measures and increase public confidence in airline transportation. Six workshops dealt with specific safety areas, namely: (1) *Crew Training*, (2) *Air Traffic Control and Weather*, (3) *Safety Data Collection and Use*, (4) *Application of New Technology*, (5) *Aircraft Maintenance Procedures and Inspection*, and (6) *Development of Flight Crew Procedures*.

Workshop # 5, *Aircraft Maintenance Procedures and Inspection*, recommended that DOT remove maintenance delays and cancellations from the On-Time Flight Performance Reporting System stating that: (1) their inclusion intimidates maintenance personnel, (2) their inclusion encourages potentially unsafe practices, (3) the risk of abuse outweighs the benefits of the information, and (4) the information is already required for submission to local FAA offices.

Following the Aviation Safety Conference, Transportation Secretary Federico Peña and FAA Administrator David Hinson issued a press release on February 9, 1995, outlining the actions that government and industry are taking to achieve a goal of "zero accidents." Secretary Peña and Administrator Hinson presented 173 safety action initiatives that the government, industry and labor developed. The *Aviation Safety Action Plan* of February 9, 1995, sets the timetable for achieving these safety action initiatives. While 104 of the safety initiatives are scheduled for completion by September 30, 1995, there is no specific time schedule to resolve the issue of maintenance delays in the On-Time Flight Performance Reporting System. However, the plan states "Administrative policy determination necessary."

#### **Petitions for Reversal of the Final Rule**

After the January 1995 safety conference, Northwest petitioned the DOT (Docket 50053) on January 19, 1995, to (1) grant an emergency waiver to all airlines permitting them to exclude mechanical delays or cancellations from the monthly on-time reports; and (2) institute a rulemaking proceeding to reinstate the mechanical exclusion.

Northwest maintained that the 220 industry representatives at the Aircraft Maintenance Procedure and Inspection Workshop unanimously recommended that mechanical delays and cancellations be eliminated from the on-time performance reporting. Northwest believes the present rule has the potential to jeopardize public safety by

introducing the possibility of conflict between an airline's commitment to on-time performance and its commitment to safety. Northwest estimated that 60 hours of re-programming time would be required to convert back to the previous system of excluding mechanical delays and cancellations from on-time performance reporting.

Southwest and America West filed answers on February 1 and February 3, 1995, respectively, with motions to file late. The motions are hereby granted. Both airlines supported Northwest's petition for rulemaking and emergency waiver application.

On February 15, 1995, America West, Northwest, and Southwest (joint petitioners) filed a joint emergency petition (Docket 50053). The petition requested the immediate issuance of an order instructing all reporting airlines covered by the On-Time Flight Performance Reporting System to exclude mechanical delays and cancellations from the reports submitted to the Department.

Senator Larry Pressler, Congressman James L. Oberstar, the International Brotherhood of Teamsters (IBT), the Air Line Pilots Association (ALPA), the International Airline Passenger Association (IAPA), and the International Association of Machinist and Aerospace Workers (IAM) have each sent letters to Secretary Peña on this subject. They asked the Secretary to reverse the decision to include mechanical delays and cancellations in the on-time reports and to restore the previous data collection requirements. IAPA also proposed the exclusion of delays and cancellations caused by weather, since airlines cannot control these events. IAPA believes that passengers want to know which airlines are not operating on-time because of their own shortcomings, not external causes such as weather.

Comments in opposition were filed by American and Delta. Also, American, Delta, United and USAir sent a letter (joint letter) to Secretary Peña.

American does not believe airline employees would risk their jobs and threaten passenger safety by dispatching unsafe aircraft with mechanical problems to improve on-time performance. American asserts that there are many opportunities for airlines to behave recklessly in order to improve on-time performance, if they are so inclined. American believes Northwest could make the same argument about weather or a medical emergency. For example, an airline could unsafely dispatch aircraft or attempt landings in bad weather, or refuse to make an emergency landing for an on-board

medical emergency to avoid chargeable delays and improve on-time performance. American believes that this does not happen.

The joint emergency petitioners responded that American's comments are without merit and frivolous. The joint petitioners do not believe mechanicals can be equated with inclement weather or medical emergencies. The decision to delay a flight based on mechanical problems can be made by a single airline employee, while the decision to delay a flight based on adverse weather conditions is a group process in which the government is involved. Furthermore, the petitioners contend it is absurd to think a pilot would not make a landing for a medical emergency.

Delta stated that the Department has already fully examined the safety issue and properly concluded that there is no safety risk. Delta asserts that the mechanical exclusion generated considerable unnecessary expenses for the reporting airlines. Delta believes that Northwest was less than candid in its portrayal of the opposition to reporting mechanical delays and cancellations at the safety conference. Delta compared reporting mechanical delays with reporting flights delayed because of time-consuming deicing procedures required by the FAA. Delta notes that no one has suggested that airline employees are exposed to undue pressures to meet schedules when they are faced with a decision whether to deice an aircraft or not.

The joint letter expressed the carriers' concerns about the Department reversing the on-time reporting requirements. They believe that the Department performed a thorough analysis of the issues in its final rule issued on September 30, 1994. They also believe the current requirements provide better consumer information. They suggested that the consumer information would be further improved by adding a requirement for reporting completion factor.

#### **Completion Factor**

The Department seeks comments on whether it should publish the percentage of scheduled domestic passenger departures completed or scheduled domestic revenue-passenger miles completed by the reporting carriers. Commenters should address whether the publication of this information would allow consumers to make better decisions on air-travel purchases.

Under the present reporting requirement of including mechanicals,

the Department is able to calculate for each carrier's domestic system the percentage of scheduled passenger departures completed. However, if the Department reverts to the old system of excluding flights impacted by mechanicals, it could calculate departure-completion percentages for only the reported flights. Please comment on (1) whether the departure-completion percentage should exclude or include flights impacted by mechanical problems, and (2) if flights impacted by mechanicals are included in the completion percentage, how should the Department collect this data?

Commenters should also address the use of existing data such as the *T-100 System* for calculating the percentage of scheduled domestic revenue-passenger miles completed. While the Department can presently make this calculation, the percentage is slightly overstated when an airline operates extra-section flights. Aircraft miles for extra-section flights are reported as aircraft-miles completed, but are not reported as scheduled aircraft miles. If the Department uses this system to determine a completion factor, there would be no special treatment for flights cancelled because of mechanical problems.

Commenters, that propose additional data items, should address the cost to the airlines to submit those data items.

#### Frequency of Reporting

A recent Presidential regulatory initiative directs federal agencies to review their reporting regulations in order to reduce the burden on business and the public. In many instances, less frequent reporting may relieve some burden.

From our initial review of the likely benefits of less frequent filing of on-time data, we believe that there would be no burden reduction. Airlines are required to file data for each individual flight segment, and less frequent reporting would not change this requirement. Therefore, we are not proposing to amend the filing frequency. However, if commenters can show a savings from less frequent reporting, we may be agreeable to amending the regulations.

Commenters should address the burden reduction and the effect on the usefulness of consumer information if the on-time performance data were filed less frequently. For instance, commenters may want to consider such options as: (1) Quarterly submissions to DOT with consumer information published quarterly and quarterly tapes provided CRS vendors; (2) quarterly submissions to DOT with consumer information published quarterly and monthly tapes provided CRS vendors;

and (3) quarterly submissions to DOT but data separated by month, with monthly tapes provided CRS vendors. Under option (3), the quarterly consumer information could be shown by month, by quarter or by the last month of the quarter.

#### The Proposal

The Department is proposing to reinstate the exclusion of mechanical delays and cancellations in the on-time performance reports. At the January 1995 Aviation Safety Conference, representatives of the mechanics and pilots unions expressed concerns that there may be undue pressure on mechanics to dispatch aircraft in the name of on-time performance. Neither the pilots nor the mechanics responded to the December 4, 1992 NPRM. In the interest of public safety, we wish to fully explore this issue.

When the Department decided to eliminate the mechanical exclusion, the decision was based on information in the docket and the belief that the majority of the air transportation industry, including the airlines, labor, ATA, and the general public did not oppose the change. There was no evidence in the record to indicate that safety would be adversely affected by eliminating the mechanical exclusion. The only airlines opposing the change were America West, Northwest and Southwest. These airlines generally ranked in the top three for on-time performance.

Since the Department's September 30, 1994 final rule, safety concerns have been raised. The purpose of this rulemaking is to fully explore these concerns. We do not, however, believe a safety emergency exists. As American, Delta, United, USAir and even Northwest have stated, airlines are faced with many instances where an airline must decide between safety and on-time performance, and safety always is given first priority. Accordingly, the emergency waiver requests of Northwest, America West and Southwest are hereby denied. Airlines have 10 days to appeal for review of this action to the Administrator, Research and Special Programs Administration, under 14 CFR 385.50 *et seq.*

For historical data base purposes, we are also asking airlines to comment on the retroactive application of the proposal. Specifically, the Department proposes to require airlines to refile all relevant monthly on-time reports beginning with January 1995, to exclude mechanical delays or cancellations. Comments should discuss, among other things, the availability of historical data, and burden and monthly costs involved.

Until this rulemaking is completed, airlines will continue to report according to the final rule issued on September 30, 1994. All back issues of the Department's monthly *Air Travel Consumer Report*, which includes data from the On-Time Flight Performance Reporting System, will be issued contemporaneously with the publication of this proposed rulemaking. Future issues will be issued monthly on a current basis as the data are received.

IAPA's proposal to exclude weather-related delays and cancellations will not be considered in this rulemaking, as it is beyond the scope of the September 30, 1994 final rule. Moreover, while airlines do not have control over the weather, they do control where they establish hub airports. The various hub airports throughout the country are not affected by weather to the same degree. Consumers should have this information.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866, therefore it was not reviewed by the Office of Management and Budget.

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034), because it involves Departmental policy concerning the reporting of flight delays and their potential impact on safety.

##### *Executive Order 12612*

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism") and DOT has determined the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### *Regulatory Flexibility Act*

I certify this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal will affect only large certificated U.S. airlines accounting for at least 1 percent of U.S. domestic scheduled passenger revenues (over \$450 million annually for the 12 months ended March 31, 1994). The Department's economic regulations define "large certificated air carrier" to include U.S. air carriers holding a certificate issued under section 401 of the Federal Aviation Act of 1958, as

amended, that operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds. Consequently, small carriers are not affected by this final rule.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being sent to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under OMB NO: 2138-0041; ADMINISTRATION: Research and Special Programs Administration; TITLE: Airline Service Quality Performance Reports; NEED FOR INFORMATION: Consumer Information and Flight Data for Air Traffic Control; PROPOSED USE OF INFORMATION: Consumer Publications; FREQUENCY: Monthly; BURDEN ESTIMATE: 1,920; AVERAGE BURDEN HOURS PER RESPONDENT 192. For further information contact: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590-0001, (202) 366-4735 or Transportation Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number 2137-AC67 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 234

Advertising, Air carriers, Consumer protection, Reporting requirements, Travel agents.

Proposed Rule

Accordingly, it is proposed to amend 14 CFR Part 234, Airline Service Quality Performance Reports, as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

1. The authority for Part 234 continues to read as follows:

Authority: 49 U.S.C. 40101, 40114, 41702, 41708, 41712; 5 U.S.C. 553(e) and 14 CFR 302.38.

2. Section 234.2, Definitions, is amended by revising the definition of "reportable flight" and by adding the definitions for "mechanical delay" and "mechanical cancellation" in

alphabetical order as set forth below, and the introductory text is republished as follows:

§ 234.2 Definitions.

For the purpose of this part:

\* \* \* \* \*

Mechanical delay and mechanical cancellation mean respectively, the arrival delay (by 15 minutes or more) or cancellation of a flight scheduled to be operated with a particular aircraft on a particular day due to mechanical problems on that aircraft that are reported to the Federal Aviation Administration pursuant to 14 CFR 121.705 or 121.703. Mechanical delays will include delays in both the flight on which the mechanical problem was encountered and subsequent delayed flights performed by the same aircraft, or the aircraft substituted for it, on the same day, where the delay was attributable to the initial mechanical problem.

\* \* \* \* \*

Reportable flight means any nonstop flight to or from any airport within the contiguous 48 states that accounted for at least 1 percent of domestic scheduled passenger enplanements in the previous calendar year, as reported in reports submitted to the Department pursuant to part 241 of this title. Qualifying airports will be specified periodically in reporting directives issued by the Office of Airline Statistics. Flights delayed or cancelled because of qualifying mechanical problems are excluded from the carriers reports.

3. Section 234.4 is amended by redesignating paragraphs (b), (c), (d), (e), and (f) as (c), (d), (e), (f), and (g), respectively, and adding a new paragraph (b) to read as follows:

§ 234.4 Reporting of on-time performance.

\* \* \* \* \*

(b) A reporting carrier shall not report any of the information specified in paragraph (a) of this section for any scheduled operation that was late or cancelled due to a mechanical cancellation or mechanical delay.

\* \* \* \* \*

4. Section 234.8 is amended by revising paragraph (b)(1) as set forth below, and the introductory text of paragraph (b) is republished as follows:

§ 234.8 Calculation of on-time performance codes.

\* \* \* \* \*

(b) The on-time performance code shall be calculated as follows:

(1) Based on reportable flight data provided to the Department, calculate the percentage of on-time arrivals of each nonstop flight. Calculations shall

not include discontinued, extra-section flights, nor flight operations affected by mechanical delays or mechanical cancellations for which data are not reported to the Department.

\* \* \* \* \*

Issued in Washington, D.C. on May 26, 1995.

Ana Sol Gutierrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95-13630 Filed 6-1-95; 8:45 am]

BILLING CODE 4910-62-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1307

Plastic Buckets; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission has voted to terminate a proceeding to develop a rule addressing risks of injury and death associated with certain 5 gallon plastic buckets. The Commission initiated the proceeding when it published an advance notice of proposed rulemaking ("ANPR") on July 8, 1994. 59 FR 35058. On February 8, 1995, the Commission voted to terminate the proceeding and withdraw the ANPR. As explained below, the Commission determined that based on information available at this time, rulemaking is not warranted.

FOR FURTHER INFORMATION CONTACT: Celestine Trainor, Directorate for Epidemiology, Division of Human Factors, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0468.

SUPPLEMENTARY INFORMATION:

A. Background

In July 1989, the Commission first learned of a drowning hazard associated with certain large buckets or bucket-like containers. These drownings occurred when a child leaned over the bucket and fell in head first. Children have drowned in a very small amount of liquid. Because of their shape, size, and sturdiness, the buckets do not tip over,

1 The Commission voted to issue this termination notice with Chairman Ann Brown and Commissioner Mary Gall voting in favor of issuing the notice. Commissioner Thomas Moore abstained from voting on this implementing notice because he did not participate in the previous decision to withdraw the ANPR.

nor can toddlers who have fallen into the buckets extricate themselves.

Upon learning of such incidents, the Commission issued a Safety Alert in July 1989 warning consumers of the potential drowning hazard associated with this product. The Commission also contacted the major trade associations representing manufacturers and fillers of buckets. These trade associations formed the Coalition for Container Safety and developed an information and education program that included distribution to consumers of free self-adhesive warning labels and production of a video news release.

The Commission staff also worked with ASTM subcommittee F15.31 on voluntary standards for 5-gallon buckets. In 1993, ASTM approved an emergency standard for labeling of buckets to address the drowning hazard, and a final ASTM standard for labeling is in process. In addition, an ASTM subcommittee task group pursued the possibility of developing a draft performance standard. After considering various options, subcommittee members stated at a March 17, 1994 meeting that they did not believe a performance standard was feasible and that they would continue to vote against it. Subsequent subcommittee and task force meetings did not progress any further toward a voluntary performance standard.

On July 8, 1994, the Commission published an ANPR explaining that it was beginning a proceeding to address the hazard of drowning associated with 5-gallon plastic buckets and that a range of options were open to the Commission to address this hazard. 59 FR 35058, 35062.

## B. Statutory Authority

The Commission initiated the rulemaking proceeding under the Consumer Product Safety Act ("CPSA"). 15 U.S.C. 2051–2084. Sections 7, 8 and 9 of the CPSA set forth the requirements that the Commission must follow to issue safety regulations. 15 U.S.C. 2056, 2057 and 2058.

The July 8, 1994 ANPR was the first step required in the rulemaking process. In accordance with section 9(a) of the CPSA, the ANPR described the product, explained the nature of the risk of injury, summarized the possible regulatory alternatives, and discussed existing relevant standards. The ANPR also invited interested persons to submit (i) comments concerning the risk of injury; (ii) an existing standard or portion of a standard to be developed as a proposed rule; and (iii) a statement of intention to modify or develop a voluntary standard that would address

the risk of injury associated with plastic buckets. 15 U.S.C. 2058(a). The Commission received 84 comments in response to the ANPR.(2)<sup>2</sup>

## C. The Product

As explained in the ANPR, this proceeding covers certain buckets, referred to as "5-gallon plastic buckets." They are open-head buckets with a rated capacity of 4½ to 5½ gallons and are generally 14 inches high and 10.25 to 11.25 inches in diameter. They have practically straight sides and are manufactured of high density polyethylene. These buckets are used to package and transport such industrial, commercial and consumer products as chemicals, cleaning substances, foods, paints and construction materials. Consumers obtain the buckets when they purchase consumer goods, like paint or detergent, packaged in the buckets, when they carry the buckets away from job sites, or when they purchase them empty. The ANPR described the bucket industry based on a study conducted by the Freedomia Group, Inc. That study estimated that by 1997, 175 million open-head plastic buckets will be produced annually.(1)

## D. Risks of Injury and Death

Incident scenarios usually involved an unwitnessed event when a child leaned over the bucket and fell in head first.

Of the 112 fatal incidents which CPSC staff investigated, the location of the caregiver could be determined in 93 of the cases. In 91 of these incidents, the caregiver was not in the same room with the victim.(12)

Of the 19 investigations of "near-miss" situations where the victims survived, the location of the caregiver was known in 16 of these cases. In 13 of these incidents, the caregiver was not in the same room with the victim.(12)

Between January 1984 and January 1995, the Commission has received reports of 247 deaths and 32 non-fatal incidents associated with 5-gallon buckets. The estimated annual average number of deaths for the years 1990, 1991, and 1992, is about 36, a slight reduction from the annual average estimate of about 40 for the years 1990 and 1991. The ages of the victims ranged from 7 to 24 months, with a median age of 11 months. Sixty percent of the victims were male. Height and weight of the victims, when reported, averaged about 28 inches and 22 pounds, respectively. Where race/ethnicity was reported, minority groups

accounted for about 70% of those incidents.(4)

All but one of the incidents in which the bucket material was reported involved plastic buckets—the other was metal. In 35 incidents, the bucket material was not known. In cases where the buckets' measurements were known, over 90% were 5-gallon buckets, usually 14 to 15 inches high, with diameters of about 12 inches. The average height of the liquid in the buckets was about 6 inches.(4)

## E. Existing Standards

As discussed above, ASTM formed subcommittee F15.31 to address hazards associated with buckets. In July 1993, ASTM approved ES 26–93, an emergency labeling standard for 5-gallon plastic buckets. The standard requires that 5-gallon open-head buckets have a specified label at the time they are sold or delivered to the end user or, if the bucket is intended to be sold empty, when shipped to a retailer for sale. The label must be difficult to remove and must not be covered, obstructed or removed by distributors or retailers. The placement, size, layout, and wording of the label are specified. The label contains a pictorial along with the words: "Children can fall into bucket and drown" followed by the words "Keep children away from bucket with even a small amount of liquid." The label may be modified to include additional languages.(8) ASTM is in the process of making this a final standard. The ASTM subcommittee also examined the possibility of a performance standard, but as of this time, has not developed one.(1)

In addition, as discussed in the ANPR, California has a law, in effect since September 1993, that requires a warning label on 5-gallon buckets intended for use, sale, or distribution within the state. Also, as discussed in the ANPR, there are several standards that establish criteria for handling and shipping of buckets, but these standards do not address the child-drowning hazard.(1)

## F. Industry's Labeling, Information and Education Campaign

Following publication of the ANPR, industry substantially increased its efforts with respect to labeling and information and education. A substantial number of 5-gallon plastic buckets are now being labeled in conformance to the ASTM labeling standard described above. According to a letter dated January 17, 1995 from counsel for five major bucket manufacturers, 80% of the buckets manufactured by those companies were

<sup>2</sup> Numbers in parentheses refer to documents listed at the end of this notice.

being labeled in accordance with the ASTM standard, and that compliance would increase in the coming months. The letter stated that these five companies comprise approximately 90% of the U.S. bucket market.(9)

These five manufacturers also initiated an education and information program warning of the drowning hazard associated with plastic buckets. In late fall of 1994, they issued an audio news release and an audio public service announcement. They are in the process of producing a large color poster to be widely distributed through key safety, health and other organizations. As of February 8, 1995, these firms had committed or spent approximately \$250,000 on the campaign, and their counsel represented that the firms are committed to continuing the campaign over the next 2½ years, spending approximately an additional \$250,000.(9)

### G. Action by the Commission

On February 8, 1995, the Commission held an oral briefing to have the staff provide an update on this proceeding. After considering the issues and information discussed above, the Commission determined that rulemaking is not warranted. Accordingly, the Commission voted to terminate the proceeding and withdraw the ANPR issued on July 8, 1994. In withdrawing the ANPR, the Commission is not relying on a voluntary standard under section 9 of the CPSA. See 15 U.S.C. 2064 and 16 CFR 1115.5. As discussed below, the two Commissioners differed in the reasoning behind their common conclusion that rulemaking is unwarranted.

Chairman Ann Brown stated: "In view of the progress made by the bucket industry in placing English and Spanish warning labels on five-gallon buckets, its commitment to an ongoing information and education campaign, the significant cost to the Commission and industry that could result in attempting to redesign buckets to meet a performance standard with no assurance that such a standard would be practicable and reasonable for all buckets, or even a majority of buckets, it makes sense to terminate the proceeding."(10)

In her statement, the Chairman reviewed the initiation of the proceeding and the industry's efforts involving labeling and developing an information and education campaign. She noted the apparent success of labeling legislation in California where, as far as the Commission is aware, no labeled bucket-related deaths have

occurred since the law took effect. The Chairman noted that her decision was based in part on the significant resources that would be required to address the drowning hazard through a performance standard, noting that "it is best to concentrate those resources on problems that are more clearly solvable within a reasonable period of time." Finally, the Chairman encouraged industry to continue exploring alternatives to labeling that could potentially eliminate the bucket drowning hazard.(10)

Commissioner Mary Sheila Gall observed in her statement that "it is clear that development of a voluntary performance standard and prototype solutions were unworkable, despite the best efforts of industry and our staff." Commissioner Gall explained that, although industry's efforts toward labeling and an information and education campaign were laudable, they did not form the basis of her vote to terminate the rulemaking. Rather, Commissioner Gall found that the drowning incidents occurred due to the absence of adult supervision. She stated: "It is those charged with the responsibility of caring for young children who are creating the hazard. It is not the product." Commissioner Gall concluded that her vote to terminate the rulemaking reaffirmed her position "that the Federal government cannot mandate changes in products as a substitute for responsible adult supervision. The deaths of these children are inexcusable. The fact that they were preventable is tragic."(11)

In accordance with the Commission's decision that a rulemaking proceeding is no longer warranted to address the drowning hazard associated with 5-gallon plastic buckets, the Commission hereby withdraws the ANPR published on July 8, 1994 (59 FR 35058).

Dated: May 30, 1995.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

### Reference Documents

The following documents contain information relevant to this rulemaking proceeding and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Washington, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

1. **Federal Register** notice, "Plastic Buckets; Advance Notice of Proposed Rulemaking; Request for Comments and Information," July 8, 1994 (59 FR 35058).

2. Comments received in response to **Federal Register** notice, "Plastic Buckets; Advance Notice of Proposed Rulemaking; Request for Comments and Information," July 8, 1994 (59 FR 35058).

3. Memorandum from Ronald L. Medford, Assistant Executive Director, HIR, to the Commission, "Commission Meeting on 5-Gallon Buckets," February 7, 1995.

4. Memorandum from Suzanne P. Cassidy, EPA to Celestine Trainor, EPHF, "Data Update of Investigated Cases Associated with 5-Gallon Buckets," January 20, 1995.

5. Memorandum from George Sushinsky, LSEL, to Celestine Trainor, EPHF, "LSEL Status Report on Performance Test Development," January 19, 1995.

6. Log of Meeting of ASTM F15.31 Performance Task Group, July 20, 1994.

7. Log of Meeting of ASTM F15.31, January 25, 1995.

8. ASTM ES 26-93: Standard for Specification of Cautionary Labeling for Five Gallon Open-Head Plastic Containers (Buckets).

9. Letter from David H. Baker, Holland and Knight to Eric Rubel, CPSC, concerning industry program, January 17, 1995.

10. Statement of Chairman Ann Brown, "Five-gallon Buckets," February 8, 1995.

11. Statement of Commissioner Mary Sheila Gall, "The Termination of Rulemaking Proceedings Regarding Five Gallon Buckets," February 8, 1995.

12. Memorandum from Suzanne P. Cassidy, EPA to Ronald Medford, HAR, "Location of Caregivers (Bucket Investigations)," April 20, 1995.

[FR Doc. 95-13597 Filed 6-2-95; 8:45 am]

BILLING CODE 6355-01-P

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Parts 10, 12, 102, 134, and 177

RIN 1515-AB19; 1515-AB34

#### Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable To Imported Merchandise

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On May 5, 1995, Customs published in the **Federal Register** a notice of proposed rulemaking that set forth proposed amendments to the interim Customs Regulations establishing rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement and republished, with some modifications, proposed amendments to the Customs Regulations to provide uniform rules governing the determination of the country of origin of imported merchandise. This document extends for an additional 30 days the period of time within which interested

members of the public may submit comments on the proposed amendments.

**DATES:** Comments must be received on or before July 19, 1995.

**ADDRESSES:** Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Sandra Gethers, Office of Regulations and Rulings (202-482-6980).

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 5, 1995, Customs published in the **Federal Register** (60 FR 22312) a notice of proposed rulemaking that (1) set forth proposed amendments to the interim Customs Regulations, published in the **Federal Register** on January 3, 1994, as T.D. 94-4, which established the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement and (2) republished, with some modifications, proposed amendments to the Customs Regulations to set forth uniform rules governing the determination of the country of origin of imported merchandise, which also had been published in the **Federal Register** on January 3, 1994. The document solicited public comments that were to be received on or before June 19, 1995.

Customs has been requested to extend the period of time for comments in order to afford interested parties additional time to study the proposed regulatory changes and prepare responsive comments. Customs believes that it would be appropriate to grant the request. Accordingly, the period of time for the submission of comments is being extended 30 days.

Dated: May 30, 1995.

**Stuart P. Seidel,**

*Assistant Commissioner, Office of Regulations and Rulings.*

[FR Doc. 95-13644 Filed 6-2-95; 8:45 am]

BILLING CODE 4820-02-P

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Ch. VII**

**Establishment of an Advisory Committee To Negotiate Regulations**

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

**ACTION:** Proposed rule; clarification.

**SUMMARY:** This notice contains information concerning the membership of the advisory committee established by the Office of Surface Mining Reclamation and Enforcement (OSM) to negotiate rulemaking on coal refuse disposal sites.

**FOR FURTHER INFORMATION CONTACT:** Melanie Wilson, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 52, Washington, DC 20240, (202) 208-4609.

**SUPPLEMENTARY INFORMATION:** A notice, published March 14, 1995 (60 FR 13858), established the advisory committee and requested nominations for membership. The notice listed those groups contacted during the convening stage of the negotiated rulemaking process to help identify those issues to be considered during the negotiated rulemaking. OSM is publishing this notice to clarify that those parties contacted *have not* agreed to participate in the negotiated rulemaking and nothing in the notice should be construed otherwise.

Dated: May 25, 1995.

**Robert J. Uram,**

*Director.*

[FR Doc. 95-13691 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-05-M

**30 CFR Part 926**

**Montana Regulatory Program and Abandoned Mine Land Reclamation Plan**

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") and abandoned mine land reclamation plan (hereinafter, the "Montana plan") under the Surface Mining Control and Reclamation Act of

1977 (SMCRA). The proposed amendment consists of revisions to statutes pertaining to the designation of the Montana State Regulatory Authority and reclamation agency under SMCRA, statutory definitions including those of "prospecting" and "prime farmland," revegetation success criteria for bond release, prospecting under notices of intent, and permit renewal. The amendment is intended to revise the Montana program to be consistent with the corresponding Federal regulations and SMCRA, and to improve program efficiency.

**DATES:** Written comments must be received by 4:00 p.m., m.d.t., July 5, 1995. If requested, a public hearing on the proposed amendment will be held on June 30, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., on June 20, 1995.

**ADDRESSES:** Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the Montana plan, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, Room 2128, Casper, WY 82601-1918, Telephone: (307) 261-5776.

Gary Amestoy, Administrator, Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620, (406) 444-2074.

**FOR FURTHER INFORMATION CONTACT:** Guy V. Padgett, Telephone: (307) 261-5776

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Montana Program and Montana Plan**

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16, and 926.30.

On October 24, 1980, the Secretary of the Interior conditionally approved the Montana plan as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana plan can be found in the October 24, 1980, **Federal Register** (45 FR 70445). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.20.

## II. Proposed Amendment

By letter dated May 16, 1995, Montana submitted a proposed amendment to its program and plan pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MT-14-01). Montana submitted the proposed amendment in response to the required program amendments at 30 CFR 926.16 (f) and (g), and at its own initiative. The provisions of the Montana Code Annotated (MCA) that Montana proposes to revise are: 82-4-203, MCA (definitions); 82-4-204, MCA (rulemaking authority); 82-4-205, MCA (administration by Department of Environmental Quality); 82-4-221, MCA (mining permit required); 82-4-223, MCA (permit fee and surety bond); 82-4-226(8), MCA (prospecting permit); 82-4-226, MCA (prospecting permit); 82-4-227, MCA (refusal of permit); 82-4-231, MCA (submission of and action on reclamation plan); 82-4-232, MCA (area mining; bond; alternate plan); 82-4-235, MCA (inspection of vegetation; final bond release); 82-4-239 (reclamation by regulatory authority); 82-4-240, MCA (reclamation after bond forfeiture); 82-4-242, MCA (funds received by regulatory authority); 82-4-251, MCA (noncompliance; suspension of permits); and 82-4-254, MCA (violation; penalty; waiver).

Specifically, Montana proposes the following revisions:

### 1. Redesignation of regulatory authority and reclamation agency under SMCRA.

The Montana Legislature has enacted Senate Bill 234 to reorganize the environmental and natural resources functions of the State government, including eliminating the Department of State Lands and creating the Department of Environmental Quality, and transferring the powers of the Board of Land Commissioners, except rulemaking authority, to the Department of Environmental Quality. Montana proposes to implement these changes with the following proposed revisions: revise the definition of "Board" at 82-4-203(6), MCA, to mean the board of

environmental review instead of the board of land commissioners; delete the definition of "Commissioner" at 82-4-203(10), MCA; revise and recodify the definition of "Department" at 82-4-203(13), MCA, to mean the department of environmental quality instead of the department of state lands; revise Section 82-4-204, MCA, by deleting subsections (1), (2), and (4) which provide for the board to issue orders and hold hearings, and adding a new subsection providing that the board may adopt rules with respect to filing of reports, issuance of permits, monitoring, and other matters of procedure and administration; and revise Section 82-4-205, MCA, to provide for the administration of the Montana Strip and Underground Mine Reclamation Act (SUMRA) by the department of environmental quality instead of the department of state lands, and add provisions for the department to issue orders and conduct hearings. Additionally, Montana proposes in many other sections to replace references to "the board" (of state land commissioners) with references to "the department" (of environmental quality), to delete references to "the commissioner" (of state lands), or replace references to "the commissioner" (of state lands) with references to "the director of the department" (of environmental quality); these proposed revisions are located at: 82-4-223 (2) and (3), 82-4-226(8), 82-4-227(3)(b)(i), 82-4-231 (9) and (1)(f), 82-4-232(7), 82-4-239(1), (2), (3), and (6) 82-4-240, 82-4-242, 82-4-254 (1), (2), and (3), MCA. Additionally, at Section 82-4-251, MCA, Montana proposes to replace references to "the commissioner [of state lands] or an authorized representative" with references to "the director of the department [of environmental quality] or an authorized representative."

### 2. Revegetation criteria for bond release.

Montana proposes, in Senate Bill 365, to revise Section 82-4-235, MCA, to provide that: for land that was seeded using a seed mix that included a substantial component of introduced species approved by the regulatory authority, and on which the revegetation otherwise meets the requirements of 82-4-233(1), MCA, approval of revegetation for release of bond may not be withheld on the basis that introduced species compose a major or dominant component. Montana further proposes to add a new subsection providing that on land affected by coal mining only prior to May 3, 1978, the department may approve bond release on an area meeting the following criteria: (1) It was

seeded using a seed mix approved by the department that included introduced species, and (2) at least one of the following conditions exist: the standards of 82-4-233(1) are otherwise met; the operator has demonstrated substantial usefulness of the revegetation for grazing; the operator demonstrates that the revegetation has substantial value as a habitat component for wildlife; or the area is suitable for conversion to cropland or hayland, and the department approves and the operator completes the conversion. The new subsection would further provide that on such lands, interseeding or supplemental planting may be performed without reinitiating the revegetation liability period.

### 3. Prospecting definition and notices of intent to prospect.

Montana proposes, in House Bill 162, to revise the definition of "prospecting" at 82-4-203(26), MCA, so that it would mean either: (1) The gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical, or other techniques necessary to determine the quality and quantity of overburden in an area or the location, quantity, or quality of a natural mineral deposit; or (2) the gathering of environmental data to establish the conditions of an area before beginning mining operations. Montana further proposes to revise 82-4-226(8), MCA, by adding a provision that prospecting that is conducted to determine the location, quality, or quantity of a natural mineral deposit and that does not substantially disturb the natural land surface is not subject to the requirements for prospecting permits, but is subject to the requirements for filing a notice of intent to prospect.

### 4. Renewal of permits.

Montana proposes, in House Bill 162, to revise 82-4-221(1), MCA, to change the deadlines for filing permit renewal applications. The proposed revision would require that renewal applications be filed at least 240 days, but not more than 300 days, prior to the renewal date.

### 5. Definition of "prime farmland."

Montana proposes, in Senate Bill 234, to revise and recodify the definition of "prime farmland" at 82-4-203(25), MCA. Under the proposal, "prime farmland" would mean land that meets the criteria for prime farmland prescribed by the United States Secretary of Agriculture in the **Federal Register** and which historically has been used for intensive agricultural purposes.

## 6. Editorial revisions.

In all of the sections cited above, Montana proposes numerous editorial revisions.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), 884.14, and 884.15(a), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15 and 884.14. If the amendment is deemed adequate, it will become part of the Montana program and Montana plan.

**1. Written Comments**

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

**2. Public Hearing**

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., mdt, on June 20, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

**3. Public Meeting**

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing

to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made part of the administrative record.

**IV. Procedural Determinations****1. Executive Order 12866**

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

**2. Executive Order 12778**

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met. Decisions on proposed State abandoned mine land reclamation plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231-1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

**3. National Environmental Policy Act**

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). Also, agency decisions on proposed State abandoned mine land reclamation plans and revisions thereof are categorically

excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

**4. Paperwork Reduction Act**

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

**5. Regulatory Flexibility Act**

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

**List of Subjects in 30 CFR Part 926**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 1995.

**Richard J. Seibel,**

*Regional Director, Western Regional Coordinating Center.*

[FR Doc. 95-13665 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-05-M

**National Park Service****36 CFR Part 13**

RIN 1024-AC05

**Glacier Bay National Park, Alaska: Vessel Management Plan Regulations**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) has reevaluated the current vessel regulations for Glacier Bay National Park and Preserve and is proposing to revise the regulations, including vessel quotas, that were established to protect the endangered humpback whale and other resources Glacier Bay National Park and Preserve manages. These regulations are being proposed after an

Endangered Species Act, Section 7, consultation with the National Marine Fisheries Service (NMFS), and are consistent with the 1993 Biological Opinion issued by that agency. The regulations are drafted to track the proposed action (Alternative Five) from the six-alternative Vessel Management Plan and Environmental Assessment prepared by the NPS. The proposed regulations contemplate an increase in cruise ship use, to be offset by specific mitigation measures. The regulations would authorize a 72 percent seasonal increase in cruise ship traffic during the months of June, July, and August. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, the increased traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. The NPS also solicits comment on the possibility of modest increases in seasonal use by charter and private vessels. The proposed regulations would also extend and codify park compendium vessel regulations that were developed, under the authority of the existing regulations, for the protection of humpback whales, Steller sea lions, and other wildlife and resource values within the park. Additional measures are also proposed to mitigate natural resource impacts associated with the proposed increase in vessel traffic. Finally, to provide park visitors a range of recreational opportunities and to maintain opportunities for the safe use of kayaks, the proposed regulations would close the upper Muir Inlet to motor vessels on a seasonal basis.

**DATES:** Written comments, suggestions, or objections will be accepted until August 4, 1995. Hearing dates and locations are listed under

**SUPPLEMENTARY INFORMATION**, below.

**ADDRESSES:** Comments should be addressed to: Superintendent, Proposed Regulations Comment, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826.

**FOR FURTHER INFORMATION CONTACT:** J.M. Brady, Superintendent, Glacier Bay National Park and Preserve, P.O. Box 140, Gustavus, Alaska 99826, Telephone: (907) 697-2230.

**SUPPLEMENTARY INFORMATION:**

### Public Hearings

Open houses and hearings are scheduled for the following dates and locations:

June 19—Gustavus, School Gym, Open House (6:30 to 8 p.m.) & Hearing (8 p.m.)

June 20—Juneau, Centennial Hall, Open house (2 to 4 p.m.) & Hearing (8 p.m.)

June 21—Hoonah, Open house (6:30 to 8 p.m.) & Hearing (8 p.m.)

June 22—Elfin Cove, Community Bld., Open House (6:30 to 8 p.m.) & Hearing (8 p.m.)

June 23—Pelican, Community Hall, Open House (6:30 to 8 p.m.) & Hearing (8 p.m.)

July 11—Anchorage, NPS Regional Office, 2525 Gambell St., Hearing (7 p.m.)

### Background

Glacier Bay National Monument was established by presidential proclamation dated February 26, 1925 (43 Stat. 1988). The monument was established to protect the dynamically changing glacial environment of mountains, tidewater glaciers, associated movements and development of flora and fauna, and to promote the scientific study of such. The early monument included marine waters within Glacier Bay north of a line running approximately from Geikie Inlet on the west side of the bay to the northern extent of the Beardslee Islands on the east side of the bay. The monument was expanded by a second presidential proclamation on April 18, 1939. 53 Stat. 2534. The expanded monument included additional lands and the marine waters of all of Glacier Bay; portions of Cross Sound, North Inian Pass, North Passage, Icy Passage, and Excursion Inlet; and Pacific coastal waters to a distance of three miles seaward between Cape Spencer in the south and Sea Otter Creek, north of Cape Fairweather. The inclusion of marine waters within the boundaries of the monument and present-day park presents unique opportunities for the study and preservation of marine flora and fauna in an unimpaired state.

Glacier Bay National Monument was redesignated as Glacier Bay National Park in 1980 by the Alaska National Interest Lands Conservation Act (ANILCA). The new park included all lands and waters of the previously existing monument, plus additional land areas. 94 Stat. 2382. The legislative history of ANILCA provides that certain NPS units in Alaska including Glacier Bay National Park “\* \* \* are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.” Sen. Rep. No. 96-413, 96th Cong., 1st Sess. 137 (1979); and, Cong. Rec. H 10532 (Nov. 12, 1980).

The original monument proclamations and the NPS Organic Act and its amendments governed the management of the former Glacier Bay National Monument and govern the present Glacier Bay National Park and Preserve. The NPS Organic Act of 1916 directs the Secretary of the Interior and the NPS to manage national parks and monuments to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1. In addition, the Redwood National Park Act of 1978 states: “The authorization of activities shall be construed and the protection, management and administration of [NPS areas] shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.” 92 Stat. 166, 16 U.S.C. § 1a-1. The NPS Organic Act also grants the Secretary of the Interior the authority to implement “rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service.” 16 U.S.C. 3. In addition to general regulatory authority, the NPS has been delegated specific authority to “[p]romulgate and enforce regulations concerning boating and other activities on or relating to waters located within areas of the National Park System, including waters subject to the jurisdiction of the United States \* \* \*.” 16 U.S.C. § 1a-2(h).

### Vessel Management

The NPS first published vessel traffic regulations for Glacier Bay, a marine body of water in Glacier Bay National Park, in 1980. Those regulations, that were published in two parts, were promulgated in response to a NMFS Biological Opinion issued pursuant to Section 7 of the Endangered Species Act. The NPS requested a formal consultation with NMFS in 1979, when for the second consecutive year, the number of endangered humpback whales that used the bay for summer feeding remained significantly below historical levels. NMFS concluded that the increase in vessel traffic, especially erratically traveling craft, may have altered the humpback's behavior and that restriction and regulation of vessel traffic were necessary to protect the humpback whales.

One portion of the ensuing regulations limited the number of cruise ships that entered Glacier Bay to two per day and not more than a total of 89 cruise ship entries during the months when whales feed in the bay (June 1 through August 31). The regulations also imposed speed and routing restrictions on all motor vessels and restricted vessels from remaining closer than one-quarter nautical mile from a whale, or otherwise pursuing or attempting to pursue a whale. 45 FR 32228 (May 15, 1980).

The second portion of regulations limited small vessel entries into Glacier Bay to 1976 levels for charter vessels and allocated 339 entries for private vessels from June 1 through August 31. 45 FR 32234 (May 15, 1980); 45 FR 85471 (December 30, 1980); and 46 FR 50370 (October 13, 1981).

The NPS intended the two sets of regulations to be temporary, until more conclusive research could be completed and NMFS could again be consulted. Pending completion of this process, the NPS extended the regulations until August 31, 1983. 48 FR 21947 (May 16, 1983).

On June 22, 1983, NMFS issued its second Biological Opinion. The NMFS reported that while the amount of vessel use that would have the effect of total whale displacement from Glacier Bay could not be defined or predicted, the operational and vessel number restrictions imposed by the NPS were sufficient so that some increase in the amount of vessel use could occur without jeopardizing the continued existence of the southeast Alaska humpback whale stock. However, NMFS directed that no additional vessel traffic should be allowed unless the number of individual whales that enter Glacier Bay remained equal to or greater than the 1982 level of 22 whales—and that any increase of vessel traffic be implemented in a conservative manner and appropriately monitored. The NMFS suggested that no more than a 20 percent increase in the three vessel categories at that time (large, small and charter vessels) would be prudent and that a minimum of two years should be allowed for monitoring and evaluating the effects of such an increase before proposing additional increases. Lastly, NMFS cautioned the NPS that it was unable to determine the amount of additional vessel traffic in Glacier Bay to which the whales could adjust.

On April 18, 1984, based on the 1983 NMFS opinion, the NPS published proposed rules for the protection of humpback whales in Glacier Bay (49 FR 15482); final rules were published on May 10, 1985 (50 FR 19880). These

regulations continued the permit requirement and seasonal vessel limits for entry into Glacier Bay and continued the speed and routing restrictions on motor vessels, as well as the restrictions on remaining close to, or otherwise pursuing or attempting to pursue a whale. The terms “entry” and “vessel use-day” were defined and applied to prevent vessel accumulation and overcrowding. Earlier vessel categories were dropped in favor of the current categories: cruise ship, tour vessel, charter vessel, and private vessel. Vessel entry limits were retained for cruise ships and private vessels; charter vessels and the newly defined tour boat class were assigned seasonal quotas. Drawing on the NMFS 1983 Biological Opinion, the regulations provided authority for the superintendent to permit an increase in vessel traffic up to 20 percent above the 1976 base figures. The amount of whale research then underway and anticipated in the future was published with the proposed and final rules.

In 1985, the NPS authorized a 15 percent increase in cruise ship traffic and a 20 percent increase in charter vessel and private vessel entries. An additional 5 percent increase in cruise ship traffic was authorized in 1988.

In 1991, the NMFS published the Final Recovery Plan for the Humpback Whale. The interim goal of the plan is to double the extant population of humpback whales within the next 20 years by “\* \* \* optimiz[ing] natural fecundity by providing natural feeding opportunities, and reducing death and injury by human activities.” Objectives in the plan include: (1) improvement of current and historical habitat by reducing human-produced underwater noise when whales are present, (2) prevention of collisions between whales and ships, and (3) the continued monitoring of humpback whale populations.

#### **The 1995 Vessel Management Plan**

In response to requests from the cruise ship industry and other tourism groups for greater access to Glacier Bay—which is a major tourist destination—the NPS undertook a review of the vessel quotas for Glacier Bay that were established in 1985. The existing quotas were based on the NMFS 10-year-old Biological Opinion. In order to obtain an updated opinion, the NPS prepared an Internal Review Draft Vessel Management Plan/Environmental Assessment (IRDVMP/EA). In September 1992, the NPS reintiated consultation with the NMFS. The IRDVMP/EA evaluated four alternatives for managing vessel traffic in Glacier

Bay. The NMFS review covered any vessel management alternative that is equivalent to, or less than, the range of vessel traffic increase described in the plan. NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 3). Two more alternatives that are within the scope of the Biological Opinion that NMFS subsequently issued have since been added to the plan. The four alternatives reviewed by NMFS ranged from an average 17 percent reduction in all vessel traffic—to an apportioned increase in cruise ship (72 percent), charter boat (8 percent), and private vessel traffic (34 percent). The NMFS reviewed the IRDDVMP/EA and analyzed the potential impacts of the plan on endangered humpback and gray whales and the threatened Steller sea lion.

Following review, the NMFS issued a Biological Opinion on February 19, 1993. The NMFS reported a nonjeopardy finding for the gray whale: as gray whales rarely enter Glacier Bay, the NMFS does not believe there will be any adverse impact on the gray whale as a result of the plan. (On June 16, 1994, the NMFS published a determination to remove the eastern North Pacific gray whale population from the list of endangered wildlife and plants (59 FR 31094)). The NMFS also concluded that the plan would not adversely affect the Steller sea lion population. All action alternatives proposed in the plan recommend that the existing summer closure surrounding the South Marble Island sea lion haul-out (100 yards) be extended to include this and other other haul-outs year-round.

In addressing humpback whales, the NMFS opinion recognized that the humpback whales that frequent southeastern Alaska (including those that visit Glacier Bay) are presumably part of a discrete North Pacific population. Therefore, the NMFS considered whether the effects of the plan were likely to jeopardize the continued existence of the entire North Pacific humpback population. The NMFS concluded that, for the three-year period following implementation, it would not. Beyond this short-term prediction, NMFS did not project long-term effects. NMFS did, however, make the following observations concerning the decline in humpback whale use of Glacier Bay, an issue of concern to NPS because of its duty to manage Glacier Bay in a manner that protects the opportunity for whales to enter and feed in the park's waters:

The NPS Vessel Management Plan and environmental assessment document a

declining trend in whale usage of Park waters and a decline in crude birth rate since 1988. However, given the small sample sizes involved, and the high inherent variability of these types of data, it is hard to assess whether or not these trends are real. If the trends are real, there is no way to determine whether they are caused by changes in prey distribution or increases in vessel traffic because there have not been conclusive prey studies or vessel interaction studies. However, because these changes have occurred coincidentally with increases in vessel traffic, NMFS cannot rule out the hypothesis that some humpback whales may avoid the area due to vessel traffic.

NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 13).

To mitigate these concerns, the NMFS urged the NPS "to take a conservative approach in all management actions that may affect humpback whales." *Id.* at 14. NMFS limited the validity of its opinion, as follows:

[B]ecause NMFS is concerned about significantly declining use of Park waters by humpback whales and a decline in the crude birth rate for humpback whales in Glacier Bay National Park and Icy Strait since 1988, this opinion is valid only until December 31, 1997.

NMFS Biological Opinion, February 1993 letter of transmittal (NPS VMP/EA, Appendix D, p. 2). NMFS directed that formal consultation must be reinitiated upon the expiration of the opinion. The NMFS also made two specific recommendations that have been included in all of the action alternatives of the NPS 1995 Vessel Management Plan:

(1) The NPS should implement a humpback whale feeding ecology research program which will provide information on movement, distribution, and abundance of humpback whales in Glacier Bay and northern southeast Alaska at least as far south as Sumner Strait. These data should be correlated to distribution of whale prey in space and time. Studies should also be conducted to determine how vessel presence alters the behavior and/or distribution of humpback whales.

(2) The NPS should continue monitoring programs that identify the number of humpback whales that feed in the National Park waters, and their individual identity, age, reproductive status, and length of stays. Although this information by itself will not provide an answer to the hypothesis that vessels affect humpback whales, it does provide indications of trends and deviations in humpback whale use in and around Glacier Bay.

NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, p. 14).

### The Proposed Action

The proposed regulations are drafted to track the proposed action (Alternative

Five) from the six-alternative Vessel Management Plan and Environmental Assessment prepared by the NPS. The proposed regulations contemplate an increase in cruise ship use, to be offset by specific mitigation measures. The regulations would authorize a 72 percent seasonal increase in cruise ship traffic during the months of June, July, and August. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, the increased traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. The basis for this proposal is the proposition that, with adequate mitigating measures, the number of seasonal entries allocated to cruise ships can be increased to equal the maximum daily use limit of two. The proposed regulations would also extend and codify park compendium vessel regulations that were developed, under the authority of the existing regulations, for the protection of humpback whales, Steller sea lions, and other wildlife and resource values within the park.

Although the proposed regulations do not propose an increase in charter vessels or private vessels, the NPS is interested in soliciting comment on the possibility of an 8% increase in charter vessel use and a 15% increase in private vessel use of Glacier Bay waters from June 1 through August 31, as described in Alternative Six in the VMP/EA. As in the case of cruise ships, this option would not allow an increase in the present maximum number of daily entries for charter vessels and private vessels (currently 6 and 25, respectively). Rather, it would allow these increases by authorizing more entries and use-days in early and late summer in each category:

For charter vessels: Seasonal entries and use-days would increase 8% from the present cap of 511 use-days to a new cap of 552 use days.

For private vessels: Seasonal entries and use-days would increase 15% from the present cap of 1,714 use-days to a new cap of 1,971 use days.

This option could provide more opportunities for a greater variety of visitors to Glacier Bay, including local park neighbors. However, the increase in vessel traffic from this option could result in greater impacts to park resources, particularly in light of the maneuverability of these smaller vessels and the challenge of achieving compliance with protective regulations. Consequently, NPS is considering this option, perhaps on a trial basis, contingent upon mitigation measures such as an educational orientation

program for small vessel operators, a compliance monitoring program, continued research on potential impacts to park resources, and—fundamental to all these measures—adequate resources for implementation. We encourage commenters to submit views on this option, that may be incorporated into the final regulation.

For general mitigation purposes, the proposed regulations would require charter and private vessel operators to attend a short educational program provided by NPS each season when they enter Glacier Bay. The program would inform boaters of closures, restrictions and other resource protection measures, as well as provide additional information to assist boaters in having a safe and enjoyable visit to the park. The NPS will also vigilantly monitor vessel use and enforce resource protection regulations.

Alternative Five proposes several additional mitigating measures. The NPS proposes to adopt the existing state standards for marine vessel (stack) emissions within Glacier Bay as NPS regulations.

This would permit the NPS to cooperatively monitor and enforce these standards. The NPS has received complaints from park visitors concerning stack emissions from cruise ships. While underway, cruise ships sometimes emit a blue-grey or black smoke plume as they travel the length of the Bay. As cruise ships increase the speed of their engines to head down-bay after their passengers have viewed Margerie Glacier, stack emissions sometimes increase and stagnate in the generally still air of the upper inlet, despoiling the spectacular and pristine view of the tidewater glaciers. Temperature inversions occur frequently at this location, holding plumes low and pancake-like over the inlet for hours. By adopting this regulation, the NPS can more effectively and consistently enforce the emission standards. This will ensure that all park visitors, including those visitors arriving each day on the second cruise ship, have an opportunity to view and photograph the tidewater glaciers in an unimpaired state.

Underwater noise pollution from cruise ship operation is also a park resource concern. The mechanical noise transmitted into the water by moving vessels has been identified as one of the most likely human-caused disturbances to whales. NMFS Biological Opinion, February 19, 1993 (NPS VMP/EA Appendix D, pp. 10–12).

Given the above concerns about air pollution and underwater noise pollution, NPS is proposing that cruise

ship companies seeking entry permits for operation in Glacier Bay prepare and, after approval, implement a pollution minimization plan. The purpose of this plan would be to assure, to the fullest extent possible, that cruise ships permitted to travel within Glacier Bay National Park apply the industry's best approaches toward minimization of air and underwater noise pollution. These approaches may include, for example, installation of original or retrofitted technology, use of cleaner fuels, and improved methods of operation. NPS specifically seeks comment on the merits of this pollution minimization proposal, and welcomes the input of industry and other knowledgeable parties on current pollution control measures across the cruise ship industry, research and development concerning improvements in pollution control measures, as well as the feasibility of various pollution minimization approaches. NPS intends to evaluate all this information in determining how to achieve air and noise pollution control and protection of park resources in the Bay.

In a similar vein, for entry permits subject to competitive allocation, NPS will give a strongly weighted preference to commercial vessels that can demonstrate minimization of air and underwater noise pollution. In this way, companies will be challenged to devise their own effective, state-of-the-art solutions.

The above measures to achieve cleaner, quieter cruise ship operations in Glacier Bay would provide important mitigation toward the protection of air quality and whale habitat in Glacier Bay. In addition, cruise ship permits would require permittees to assess the short and long-term impacts of their activities on potentially affected Glacier Bay resources through a research and monitoring program.

Since whales have been known to arrive at the mouth of Glacier Bay in May, the speed limit and the requirement that vessels in transit stay one nautical mile off-shore would automatically become effective in the designated lower bay whale waters each year on May 15. This earlier date would ensure that whales arriving at the mouth of Glacier Bay in late spring are able to pass through the narrow entrance to Glacier Bay to access the feeding areas with minimal disturbance. Previously the "mid-channel restriction" began on June 1, and the speed restriction was not activated until several whales were observed near the mouth of the bay.

Other natural resource protection measures that are proposed in this rulemaking serve to protect Steller sea

lions and their haul-outs; pupping and molting harbor seals; nesting sea bird colonies; and, nesting and molting water fowl and water fowl feeding areas. The specific locations and wildlife affected by these measures, and the activities taking place that are critical to each species that these measures seek to protect, are set out below in the section-by-section analysis.

During the last 10 years Glacier Bay has experienced increased use by visitors exploring the bay by kayak. Currently, kayaks and motor vessels concentrate in the bay's west arm, primarily because the west arm contains easily accessible, large, renowned tidewater glaciers. Conversely, kayakers (and other backcountry users), preferring a more remote, undisturbed recreational experience focus their activities in the less-used east arm (Muir Inlet). Given this, the NPS believes that even a modest increase in motor vessel traffic in the upper reaches of the Muir Inlet would substantially reduce opportunities for remote recreational experiences. Specifically, the proposed east arm closure would allow kayakers access to a tidewater glacier with no motor vessel disturbance. The closure would also mitigate a safety concern: kayakers are susceptible to being overturned by large vessel wakes. This concern is amplified in the narrow confines and steep sides of the upper east arm (Muir Inlet). The NPS believes that it is appropriate to provide a range of visitor opportunities (from motorized to non-motorized), take steps to protect the safety of kayakers, and maintain opportunities for use of this watercraft in Glacier Bay. Accordingly, based on detriment to the recreational resource values associated with kayaking and other backcountry use as well as safety concerns, the NPS is proposing to close the waters of the Muir Inlet north of Point McLeod (including Wachusett Inlet) to motor vessels June 1 through August 31.

#### Section-by-Section Analysis

Section 13.65(b)(1) of the proposed regulations defines various types of vessels and other terms used in this section. Most of the definitions are retained without significant revision from the existing regulations. However, there are exceptions:

The terms "cruise ship," "charter vessel" and "tour vessel" have been revised. In addition to some technical revisions, the proposed definitions include a measurement standard based on the rules of the International Convention on Tonnage Measurements of Ships, 1969. Congress has provided for recognition of these rules that are

generally used to measure and certify foreign hull vessels. See, Omnibus Budget Reconciliation Act of 1986, Title V—Maritime Programs, Part J—Measurement of Vessels, P.L. 99-509, 100 Stat. 1919 (codified as amended in scattered sections of 46 U.S.C.). The NPS is proposing that a vessel with an International Tonnage Certificate at or over 2,000 tons gross (that carries passengers for hire) would be defined as a cruise ship. A vessel with an International Tonnage Certificate less than 2,000 tons gross (that carries passengers for hire) would be defined as a tour vessel or a charter vessel. The existing standard of 100 tons gross, based on the U.S. method for measuring vessels, will be retained. The NPS recognizes that there is not an exact means of conversion between these two systems and will honor either rating in support of a concessions authorization and entry permit. The NPS welcomes comments from knowledgeable parties concerning this proposal.

The terms "operate" and "operating" have been expanded to include the actual or constructive possession of a vessel. This has been done to enable enforcement action against vessels violating permit or closed-water restrictions when the vessel is not underway at the time of the violation. Definitions are proposed for two new terms as a means to retain, clarify, and codify both restricted and permitted activities that were authorized and implemented under the existing 13.65(b)(2)(iii) whale-waters regulations. The first, "speed through the water," is analogous in aeronautical terms to "airspeed," as opposed to "ground speed." Whale water speed limits have been measured and enforced in this manner to prevent collisions between vessels moving rapidly "up-current" and whales or other marine mammals that are drifting "down" in the tidal current. These speed limits also lower the level of underwater noise by limiting high engine revolutions that can disrupt whale feeding activities. The term "transit" has been defined to allow vessels to approach perpendicularly and land on an otherwise unrestricted shore within designated whale waters in order to view or photograph wildlife, camp, or participate in any other park activity. The term "whale season" has been deleted and the dates on which closures or restrictions begin and end are included as part of the regulation.

Section 13.65(b)(2) of the proposed regulations authorizes a 72 percent increase in cruise ship traffic over the seasonal limits authorized and implemented under the existing

regulations. However, there would be no increase in the maximum number of cruise ships permitted to use the bay on any given day (two). Rather, the increase in traffic will be absorbed, for the most part, by authorizing more cruise ship entries in early and late summer. This section also provides for reinitiation of consultation with NMFS to ensure that the increase in vessel traffic does not affect endangered or threatened species, particularly in Glacier Bay. The section also requires the Director of the NPS to reduce vessel entry and use levels in 1998 (or thereafter) if necessary to protect the values and purposes of Glacier Bay National Park and Preserve.

Section 13.65(b)(2) also incorporates the permit requirements of section 13.65(b)(3) of the existing regulations, with minor modifications. Paragraph (b)(2)(ii)(A) requires concessioner vessels to notify the Bartlett Cove Ranger Station within the 24 hours prior to, or immediately upon, entry to the bay. Paragraph (b)(2)(iii)(A) generally requires private motor vessels entering the bay through the mouth to stop at the Bartlett Cove Ranger Station for orientation before proceeding up bay. Vessels that have previously visited the bay may receive a waiver. Paragraph (b)(2)(v)(C) allows private vessels to launch a motorized skiff or tender after anchoring. Paragraphs (vii) and (viii) have been added to clarify the superintendent's authority to revoke or deny a permit based on violations of this section.

Section 13.65(b)(3) of the proposed regulations retains the existing prohibitions on operating a vessel within one-quarter nautical mile of a whale, and on pursuing or attempting to pursue a whale. The superintendent's authority to designate temporary whale waters and establish vessel use and speed restrictions have also been retained. The proposed regulations also identify, and designate as whale waters, areas in which seasonal restrictions have applied on a recurring basis. The proposed regulations would codify the restrictions that were implemented pursuant to section 13.65(b)(2), *i.e.*, mid-channel transit through these waters, and in the case of lower bay waters, speeds not to exceed 10 knots (proposed regulation (b)(3)(v)(A)).

As whales have been known to arrive at the mouth of Glacier Bay in May, the speed limit and the requirement that vessels in transit stay one nautical mile off-shore, as proposed, would become effective in the designated lower bay whale waters each year on May 15. This earlier date would ensure that whales arriving at the mouth of Glacier Bay in late spring are able to pass with minimal

disturbance through the narrow entrance to Glacier Bay to access the feeding areas. The superintendent would continue to have discretion to increase the speed limit through these waters to 20 knots in the absence of whales.

A speed restriction is also proposed to mitigate mortality and stress of breeding and molting harbor seals resulting from large vessel wakes in the narrow confines of the Johns Hopkins Inlet (paragraph (B)). Seasonal closures and operating restrictions concerning the Spider Island group and Johns Hopkins Inlet that appear in paragraphs (b)(3)(vi)(C)–(E) are also proposed to protect the park's harbor seals, that have recently been recognized as the largest concentration of breeding harbor seals in the world. These closures and restrictions have previously been enforced as park compendium regulations. The preceding paragraph (b)(3)(vi)(B) is proposed for the year-round protection of Steller sea lions and their haul-outs and is consistent with NMFS recommendations.

Nesting sea bird colonies would be protected in proposed section 13.65(b)(3)(vi)(A), that closes colonial nesting islands to vessel landing and foot traffic year-round. These small-island closures were previously enforced, seasonally, as park compendium regulations. Continuing these restrictions year-round will reduce impacts to vegetation that is important to nesting birds and will otherwise protect this sensitive nesting habitat from trampling. This action will also augment sea lion haul-out protection at South Marble Island. Park visitors are advised in paragraph (b)(3)(vi)(F) that the distances proposed in this rulemaking that are to be maintained between visitors and wildlife are minimum distances; 36 CFR § 2.2 (wildlife protection) requires that greater distances be maintained from wildlife if it seems likely that wildlife may be disturbed or frightened.

Nesting sea birds as well as molting and feeding waterfowl would receive protection through the seasonal water (area) closures proposed for motor vessels in paragraphs (b)(3)(vii)(A)–(E). These motor vessel closures would also serve to protect harbor seal haul-outs associated with pupping and molting activities (paragraphs (C) and (D)). Similar closures were previously proposed for these areas. 48 FR 14978, April 6, 1983. That rulemaking also recognized the importance of sheltering the unique concentrations of marine mammals and birds, that these areas support, from motorized disruption during the critical months of feeding,

breeding, nesting and rearing of young. With the exception of Rendu Inlet, these areas contain, or are approached through, shallow areas that are hazardous to navigate in motor vessels.

Paragraph (b)(3)(vii)(F) proposes closing the waters of the Muir Inlet north of Point McLeod (including Wachusett Inlet) to motor vessels on a seasonal basis. This closure is proposed to allow for kayaks to safely pass through the narrow and steep walls of the east arm to the tidewater glaciers there and to provide the opportunity for camping and other backcountry use away from the noise of motor vessel traffic.

As discussed above, the NPS believes that the closures proposed in paragraphs (b)(3)(vi) and (b)(3)(vii)(A)–(E) are necessary to protect the natural values of Glacier Bay, and the closures proposed in paragraph (b)(3)(vii)(F) are necessary to protect the visitor experience values of Glacier Bay. These closures are proposed in accordance with ANILCA Section 1110(a) to prevent detriment to the resource values of Glacier Bay. Therefore, in addition to the public comment period provided by this rulemaking, the NPS will hold hearings in the vicinity of Glacier Bay on these proposed closures, as noticed in this rulemaking.

In order to further limit and mitigate the effects of underwater noise, section 13.65(b)(3)(viii) restricts generator and other non-propulsive motor use during the evening hours of summer.

Section 13.65(b)(3)(ix) clarifies the duties, responsibilities, and authority of the superintendent to regulate public use in response to changing conditions. The NPS has previously determined the need to provide administrative remedies to protect whales through imposition of temporary public-use limits, whale-water designations, and other temporary operating restrictions. *See*, 50 FR 19880, 19881–82 (May 10, 1985). The environmentally safe implementation and maintenance of the increased public-use levels proposed in this rulemaking require that the superintendent have the necessary authority to modify use levels and establish vessel restrictions to protect park resources. The proposed regulation incorporates the existing authority granted to the superintendent in 1985; recognizes that in addition to whales, other wildlife may be impacted by the increase in vessel traffic (*see*, NPS VMP/EA); and avoids duplication of existing authority and standards. In most cases, the action contemplated under this section would be the shifting of existing prohibitions, as whale and other wildlife feeding, breeding, and molting

sites shift, to new areas in the dynamic sea and landscape of the rebounding bay.

Section 13.65(b)(4) of the proposed regulations adopts the existing state restrictions on vessel (stack) emissions.

Section 13.65(b)(5)–(6) of the existing regulations, *Restricted Commercial Fishing Harvest*, has been addressed separately in proposed rules, 56 FR 37262 (August 5, 1991), and has not been considered as part of these proposed rules. However, the proposed seasonal closure of water areas to vessels (b)(3)(vi), and motor vessels (b)(3)(vii), would also apply to commercial fishing boats.

### Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to the address noted at the beginning of this rulemaking. Comments must be received on or before August 4, 1995. The NPS will review comments and consider making changes to the rule, based upon an analysis of comments.

### Drafting Information

The primary authors of this revision are Russel J. Wilson, Alaska Regional Office, National Park Service, and Molly N. Ross, Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C. Other National Park Service staff from the Alaska Regional Office and Glacier Bay National Park and Preserve made significant contributions.

### Compliance With Other Laws

This proposed rule has been reviewed under Executive Order 12866.

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The collection of information contained in this rule has been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* The Office of Management and Budget approval number is 1024–0026.

### List of Subjects in 36 CFR Part 13

Alaska, National parks.

## PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

### Subpart C—Special Regulations—Specific Park Areas In Alaska

In consideration of the foregoing, 36 CFR Part 13 is proposed to be amended as follows:

1. The authority citation for part 13 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65 also issued under 16 U.S.C. 1a–2(h), 1361, 1531.

2. Section 13.65(b) (1) through (4) is revised to read as follows:

#### § 13.65. Glacier Bay National Park and Preserve.

\* \* \* \* \*

(b) *Resource Protection and Vessel Management*—(1) *Definitions*. As used in this section:

*Charter vessel* means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry up to 49 passengers, and is available for hire on an unscheduled basis.

*Commercial fishing vessel* means any motor vessel conducting fishing activities under the appropriate commercial fishing licenses as required and defined by the State of Alaska.

*Cruise ship* means any motor vessel at or over 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) carrying passengers for hire.

*Entry* means each time a motor vessel passes the mouth of Glacier Bay into the bay; each time a private vessel activates or extends a permit; each time a motor vessel based at or launched from Bartlett Cove leaves the dock area on the way into Glacier Bay, except a private vessel based at Bartlett Cove that is gaining access or egress to or from outside Glacier Bay; the first time a local private vessel uses a day of the seven use day permit; or each time a motor vessel is launched from another vessel within Glacier Bay, except a motor vessel singularly launched from a permitted motor vessel and operated only while the permitted vessel remains at anchor, or a motor vessel launched and operated from a permitted motor vessel while that vessel is not under way and in accordance with a concession agreement.

*Glacier Bay* means all marine waters contiguous with Glacier Bay, lying north of an imaginary line between Point Gustavus and Point Carolus.

*Motor vessel* means any vessel, other than a seaplane, propelled or capable of being propelled by machinery

(including steam), whether or not such machinery is the principal source of power, except a skiff or tender under tow or carried on board another vessel.

*Operate* or *Operating* includes the actual or constructive possession of a vessel or motor vessel.

*Private vessel* means any motor vessel used for recreation that is not engaged in commercial transport of passengers, commercial fishing, or official government business.

*Pursue* means to alter the course or speed of a vessel or a seaplane in a manner that results in retaining a vessel, or a seaplane operating on the water, at a distance less than one-half nautical mile from a whale.

*Speed through the water* means the speed that a vessel moves through the water (which itself may be moving); as distinguished from “speed over the ground.”

*Transit* means to operate a motor vessel under power and continuously so as to accomplish ½ nautical mile of littoral (i.e. along the shore) travel.

*Tour vessel* means any motor vessel under 100 tons gross (U.S. System) or 2,000 tons gross (International Convention System) that is rated to carry more than 49 passengers, and conducts tours or provides transportation at regularly scheduled times along a regularly scheduled route.

*Vessel* includes every type or description of craft used as a means of transportation on the water, including a buoyant device permitting or capable of free flotation and a seaplane while operating on the water.

*Vessel use day* means any continuous period of time that a motor vessel is in Glacier Bay between the hours of 12 midnight on one day to 12 midnight the next day.

*Whale* means any humpback whale (*Megaptera novaeangliae*).

*Whale waters* means any portion of Glacier Bay, designated by the Superintendent, having a high probability of whale occupancy, based upon recent sighting and/or past patterns of occurrence.

(2) Permits. (i) The superintendent shall maintain a motor vessel permit system.

(ii) Permits for cruise ships, tour vessels, and charter vessels shall be issued in accordance with National Park Service concession authorizations. To obtain or renew an entry permit, a cruise ship company shall prepare and, after approval, implement a pollution minimization plan to assure, to the fullest extent possible, that any ship permitted to travel within Glacier Bay will apply the industry's best approaches toward minimization of air

and underwater noise pollution while operating in Glacier Bay. Such plan shall be submitted to the superintendent, who may approve or disapprove the plan. In addition, the superintendent may adopt at any time permit operating conditions for the purpose of mitigating air and underwater noise pollution or other impacts of cruise ship operation. The superintendent shall immediately suspend the entry permit(s) of any cruise ship that fails to submit, implement or abide by such a plan or operating condition.

(A) A concessioner vessel is prohibited from entering Glacier Bay unless the Bartlett Cove Ranger Station has been given notice of the vessel's entry within the 24 hours prior to, or immediately upon, entry.

(B) Off-boat activities from a concessioner vessel are prohibited, except as permitted and under conditions established by the superintendent.

(iii) Permits for private motor vessels are required to enter Glacier Bay June 1 through August 31. Private motor vessel permits shall be issued in accordance with, and subject to, conditions established by the superintendent. Conditions established for private motor vessels may include, but are not limited to, whom a vessel operator must contact when entering or leaving Glacier Bay, designated anchorages, and the maximum length of stay in Glacier Bay.

(A) June 1 through August 31, upon entering Glacier Bay through the mouth, the operator of a private motor vessel shall proceed directly to the Bartlett Cove Ranger Station for orientation. Failing to report as required is prohibited.

(1) The superintendent may waive this requirement prior to or upon entry.

(2) [Reserved]

(iv) The superintendent shall restrict vessel entry to, and operation within, Glacier Bay to no more than the following:

(A) Cruise ships are limited to two vessel use days per day;

(B) Tour vessels are limited to three vessel use days per day;

(C) Charter vessels are limited, June 1 through August 31, to six vessel use days per day, and a total of no more than 312 entries and 552 vessel use days;

(D) Private vessels are limited, June 1 through August 31, to 25 vessel use days per day, and a total of no more than 468 entries and 1,971 vessel use days;

(E) Provided that, no later than October 1, 1996, the superintendent shall reinstate consultation with the U.S. National Marine Fisheries Service

(NMFS) and request a Biological Opinion pursuant to section 7 of the Endangered Species Act. The superintendent shall request the NMFS assess and analyze any impacts, that may be associated with the vessel traffic authorized by this section (13.65), to the endangered and threatened species that occur in, or that use, Glacier Bay National Park and Preserve. Based on this Biological Opinion, applicable authority, and any other relevant information, the Director shall reduce the vessel entry and use levels for any or all categories of vessels in this section, effective for the 1998 season or any year thereafter, if required to protect the values and purposes of Glacier Bay National Park and Preserve. The Director would accordingly publish a notice of such revision in the **Federal Register**. Nothing in this paragraph shall be construed to prevent the superintendent from taking any action at any time in order to protect the values and purposes of Glacier Bay National Park and Preserve.

(v) Operating a motor vessel in Glacier Bay without a permit issued pursuant to this section is prohibited, except:

(A) A motor vessel engaged in official business of the state or federal Government.

(B) A private motor vessel based at Bartlett Cove that is transiting between Bartlett Cove and waters outside Glacier Bay, or that is being operated in Bartlett Cove in waters bounded by the Public and Administrative Docks.

(C) A motor vessel singularly launched from a permitted motor vessel, and operated only while the permitted motor vessel remains at anchor, or a motor vessel launched and operated from a permitted motor vessel while that vessel is not underway and in accordance with a concession agreement.

(D) A commercial fishing vessel otherwise authorized and permitted, and actually engaged in commercial fishing within Glacier Bay.

(E) A vessel granted safe harbor at Bartlett Cove by the Superintendent.

(vi) Violating a term or condition of a permit issued pursuant to this section is prohibited.

(vii) Violating a term or condition of a permit issued pursuant to this section may also result in the suspension or revocation of the permit by the superintendent.

(viii) Operating a motor vessel in Glacier Bay without a permit shall constitute sufficient grounds for the superintendent to deny future permit requests.

(3) Operating Restrictions. (i) Except for a commercial fishing vessel actually

trolling or setting or pulling long lines or crab pots as authorized and permitted by the superintendent, operating a vessel within one-quarter nautical mile of a whale is prohibited.

(ii) The operator of a vessel accidentally positioned within one-quarter nautical mile of a whale shall immediately slow the vessel to ten knots or less, without shifting into reverse unless impact is likely. The operator shall then direct or maintain the vessel on as steady a course as possible away from the whale until at least one-quarter nautical mile of separation is established.

(A) Failure to take action as required in paragraph (b)(3)(ii) is prohibited.

(B) [Reserved]

(iii) Pursuing or attempting to pursue a whale is prohibited.

(iv) Whale Water Restrictions. (A) May 15 through August 31, the following Glacier Bay waters are designated as whale waters.

(1) Lower Bay waters, as defined as: waters north of an imaginary line drawn from Point Carolus to Point Gustavus; and south of an imaginary line drawn from the northernmost point of Lars Island across the northernmost point of Strawberry Island to the point where it intersects the line that defines the Beardslee Island group, as described in paragraph (b)(3)(vii)(D) of this section, and following that line south and west to the Bartlett Cove shore.

(2) [Reserved]

(B) June 1 through August 31, the following Glacier Bay waters are designated as whale waters.

(1) Whidbey Passage waters, as defined as: waters north of an imaginary line drawn from the northernmost point of Lars Island to the northernmost point of Strawberry Island; west of imaginary lines drawn from the northernmost point of Strawberry Island to the southernmost point of Willoughby Island, the northernmost point of Willoughby Island (proper) to the southernmost point of Francis Island, the northernmost point of Francis Island to the southernmost point of Drake Island; and south of the northernmost point of Drake Island to the northernmost point of the Marble Mountain peninsula.

(2) East Arm Entrance waters, as defined as: waters north of an imaginary line drawn from the southernmost point of Sebree Island to the northernmost point of Sturgess Island, and from there to the westernmost point of the unnamed island south of Puffin Island (that comprises the south shore of North Sandy Cove); and south of an imaginary line drawn from Caroline Point across

the northernmost point of Garforth Island to shore.

(3) Russell Island Passage waters, as defined as waters enclosed by imaginary lines drawn from: the easternmost point of Russell Island due east to shore, and from the westernmost point of Russell Island due north to shore.

(C) The superintendent may designate temporary whale waters, and impose motor vessel speed restrictions in whale waters. Maps of temporary whale waters and notice of vessel speed restrictions imposed pursuant to this paragraph, shall be made available to the public at park offices at Bartlett Cove and Juneau, Alaska, and shall be submitted to the U.S. Coast Guard for publication as a "Notice to Mariners".

(D) The following restrictions apply in designated whale waters. Violation of a whale water restriction is prohibited:

(1) Except vessels actually fishing as authorized and permitted by the superintendent or vessels operating solely under sail, while in transit, operators of motor vessels over 18 feet in length will in all cases where the width of the water permits, maintain a distance of at least one nautical mile from shore, and, in narrower areas will navigate in mid-channel. Provided, however, that operators may perpendicularly approach and land on an otherwise unrestricted shore within designated whale waters in order to view or photograph wildlife, camp, or participate in any other park activity.

(2) Motor vessel speed limits established by the superintendent pursuant to paragraph (b)(3)(iv)(C) of this section.

(v) Speed Restrictions. (A) May 15 through August 31, in the waters of the Lower Bay as defined in paragraph (b)(3)(iv)(A)(1) of this section, the following are prohibited:

(1) Operating a motor vessel at a speed greater than 10 knots speed through the water, or

(2) Operating a motor vessel at a speed greater than 20 knots speed through the water, when the superintendent has designated a maximum speed of 20 knots during the absence of whales.

(B) July 1 through August 31, operating a motor vessel on Johns Hopkins Inlet south of 58°54.2' N. latitude (an imaginary line running approximately due west from Jaw Point) at a speed greater than 10 knots speed through the water is prohibited.

(vi) Closed Waters, Islands and Other Areas. The following are prohibited:

(A) Operating a vessel or otherwise approaching within 100 feet of a nesting seabird colony; or that part of South Marble Island lying south of 58°38.6' N.

latitude (approximately the southern one-half of South Marble Island); or Flapjack Island; or the three small unnamed islets approximately one nautical mile southeast of Flapjack Island; or Eider Island; or Boulder Island; or Geikie Rock; or Lone Island; or the northern three-fourths of Leland Island (north of 58°39.1' N. latitude; or the four small unnamed islands located approximately one nautical mile north (one island), and 1.5 nautical miles east (three islands) of the eastern-most point of Russell Island.

(B) Operating a vessel or otherwise approaching within 100 yards of a Steller (Northern) Sea Lion (*Eumetopias jubatus*) hauled-out on land or a rock; or that part of South Marble Island lying north of 58°38.6' N. latitude (approximately the northern one-half of South Marble Island); or Graves Rocks (on the outer coast); or Cormorant Rock, or any adjacent rock, including all of the near shore rocks located along the outer coast, for a distance of 1½ nautical miles, southeast from the mouth of Lituya Bay; or the surf line along the outer coast, for a distance of 1½ nautical miles northwest of the mouth of the glacial river at Cape Fairweather.

(C) May 1 through August 31, operating a vessel or otherwise approaching within ¼ nautical mile of, Spider Island or any of the four small islets lying immediately west of Spider Island.

(D) May 1 through June 30, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2' N. latitude (an imaginary line running approximately due west from Jaw Point).

(E) July 1 through August 31, operating a vessel or a seaplane on Johns Hopkins Inlet waters south of 58°54.2' N. latitude (an imaginary line running approximately due west from Jaw Point), within ¼ nautical mile of a seal hauled out on ice; except when safe navigation requires, and then with due care to maintain the ¼ nautical mile distance from concentrations of seals.

(F) Restrictions imposed in this paragraph (b)(3)(vi) are minimum distances. Park visitors are advised that protection of park wildlife may require that greater distances be maintained from wildlife. See 36 CFR 2.2 (Wildlife protection).

(vii) Closed Waters, Motor Vessels and Seaplanes. May 1 through September 15, operating a motor vessel or a seaplane on the following water is prohibited:

(A) Adams Inlet, east of 135°59.2' W. longitude (an imaginary line running approximately due north and south through the charted (5) obstruction

located approximately 2¼ nautical miles east of Pt. George).

(B) Rendu Inlet, north of the wilderness boundary at the mouth of the inlet.

(C) Hugh Miller Complex, including Scidmore Bay and Charpentier Inlet, west of the wilderness boundary at the mouth of the Hugh Miller Inlet.

(D) Waters within the Beardslee Island group (except the Beardslee Entrance), that is defined by an imaginary line running due west from shore to the easternmost point of Lester Island, then along the south shore of Lester Island to its western end, then to the southernmost point of Young Island, then north along the west shore and east along the north shore of Young Island to its northernmost point, then at a bearing of 15° true to an imaginary point located one nautical mile due east of the easternmost point of Strawberry Island, then at a bearing of 345° true to the northernmost point of Flapjack Island, then at a bearing of 81° true to the northernmost point of the unnamed island immediately to the east of Flapjack Island, then southeasterly to the northernmost point of the next unnamed island, then southeasterly along the (Beartrack Cove) shore of that island to its easternmost point, then due east to shore.

(E) Dundas Bay, west of 136°25' W. longitude.

(F) Muir Inlet, north of 58°54.8' N. latitude (an imaginary line running approximately due east from Point McLeod), including Wachusett Inlet.

(viii) Noise Restrictions. June 1 through August 31, except vessels in transit or at Bartlett Cove or as otherwise permitted by the superintendent, the use of generators or other non-propulsive motors is prohibited from 10:00 p.m. until 6:00 a.m.

(ix) Other Closures and Restrictions. Notwithstanding any other provision of this Part or 43 CFR Part 36, due to the rapidly emerging and changing ecosystems of, and for the protection of wildlife in Glacier Bay National Park and Preserve, including but not limited to whales, seals, sea lions, nesting birds and molting waterfowl:

(A) Pursuant to § 1.5 of this chapter, the superintendent may establish, designate, implement and enforce closures, restrictions, and public use limits, and terminate such closures, restrictions, and public use limits.

(B) The public shall be notified of closures, restrictions, or public use limits imposed under this paragraph, and the termination or relaxation of such, in accordance with § 1.7 of this chapter, and by submission to the U.S.

Coast Guard for publication as a "Notice to Mariners", where appropriate.

(C) When authorized by, and consistent with applicable legislation, the superintendent may issue a permit to authorize an activity otherwise prohibited or restricted under § 1.5 of this chapter.

(1) The superintendent shall include in the permit terms and conditions the superintendent deems necessary to protect park resources.

(2) [Reserved]

(D) The following are prohibited:

(1) Violating a closure, designation, use or activity restriction or condition, schedule or public use limit imposed pursuant to § 1.5 of this chapter without a permit; or,

(2) Violating a term or condition of a permit issued pursuant to paragraph (b)(3)(vii)(C)).

(E) The superintendent shall make rules for the safe and equitable use of Bartlett Cove waters and for park docks. The public shall be notified of these rules by the posting of signs or a copy of the rules at each dock.

(1) Failure to obey a sign or rule is prohibited.

(2) [Reserved]

(x) Closed waters and islands within Glacier Bay as described in paragraphs (b)(3) (iv) through (vii) of this section are described as depicted on NOAA Chart #17318 GLACIER BAY (4th Ed., Mar. 6/93).

(xi) Paragraphs (b)(3) (i) through (iii) of this section do not apply to a vessel being used in connection with federally permitted whale research or monitoring; other closures and restrictions in paragraph (b)(3) of this section do not apply to authorized persons conducting: emergency or law enforcement operations, research or resource management, park administration/supply, or other necessary patrols.

(4) Marine vessel visible emission standards. (i) The following definitions shall apply to this paragraph:

(A) *Underway* means not at berth or anchor or moored or aground.

(B) *Port* means only that area comprised by Bartlett Cove and the public dock.

(ii) Visible emissions from a marine vessel, excluding condensed water vapor, may not result in a reduction of visibility through the exhaust effluent of greater than 20 percent for a period or periods aggregating more than:

(A) Three minutes in any one hour while underway, at berth, or at anchor; or

(B) Six minutes in any one hour during initial startup of diesel-driven vessels; or

(C) 12 minutes in one hour while anchoring, berthing, getting underway or maneuvering in port.

\* \* \* \* \*

Dated: May 30, 1995.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 95-13616 Filed 5-31-95; 3:52 pm]

BILLING CODE 4310-70-P

### 36 CFR Part 13

RIN 1024-AC05

#### Glacier Bay National Park, Alaska: Vessel Management Plan Regulations

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule; availability of environmental assessment.

**SUMMARY:** This document announces the availability of an environmental assessment (EA) prepared by the National Park Service (NPS) that describes and analyzes a proposed action and five alternatives for the Glacier Bay National Park and Preserve Vessel Management Plan.

**DATES:** Comments on the EA must be received no later than August 7, 1995. Hearing dates and locations are listed under Supplementary Information, below.

**ADDRESSES:** Comments on the EA should be submitted to the Chief, Division of Environmental Quality, National Park Service, Alaska Region, 2525 Gambell Street, Room 404, Anchorage, Alaska 99503. Copies of the Glacier Bay Vessel Management Plan/ Environmental Assessment are available on request from the above address.

**FOR FURTHER INFORMATION CONTACT:** Glen Yankus, Alaska Regional Office, (907) 257-2645.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91-190, as amended), the NPS has prepared an EA for the Glacier Bay National Park and Preserve Vessel Management Plan. Open houses and hearings on the EA are scheduled in Alaska for the following dates and locations:

- June 19—Gustavus, School Gym, Open house (6:30 to 8 p.m.) and Hearing (8 p.m.)
- June 20—Juneau, Centennial Hall, Open house (2 to 4 p.m.) and Hearing (8 p.m.)
- June 21—Hoonah, Open house (6:30 to 8 p.m.) and Hearing (8 p.m.)
- June 22—Elfin Cove, Community Bld., Open House (6:30 to 8 p.m.) and Hearing (8 p.m.)

- June 23—Pelican, Community Hall, Open House (6:30 to 8 p.m.) and Hearing (8 p.m.)

- July 11—Anchorage, NPS Regional Office, 2525 Gambell St., Hearing (7 p.m.)

The vessel management plan responds to a continually growing demand for park visitation and vessel entries and addresses issues and concerns associated with vessel management and the park's marine environment. This document presents the proposed action, a no-action alternative, and four other alternatives and analyzes their environmental consequences.

The proposed action (Alternative 5) would optimize cruise ship visitor-use opportunities in Glacier Bay by raising cruise ship entry quotas. Seasonal entry quotas for cruise ships would increase by 72%. Seasonal entry quotas for tour boats, charter boats, and private boats would not change from those levels identified in the no-action alternative. The seasonal closure of designated wilderness waters to motor vessels would enhance wilderness recreation opportunities. Additional protection would be provided for sensitive resources (humpback whales, other marine mammals, and nesting birds) through special-use area closures and restrictions.

Dated: May 31, 1995.

**George T. Frampton, Jr.,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 95-13686 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-70-P

### Bureau of Reclamation

43 CFR Part 426 and 427

RIN 1006-AA32

#### Acreage Limitation and Water Conservation Rules and Regulations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice to extend comment period.

**SUMMARY:** The Bureau of Reclamation is extending the comment period published in 60 FR 16922, Apr. 3, 1995, in response to a number of requests from the public for an extension of the comment period. The extension will allow the public more time to prepare comments concerning the proposed rulemaking, Acreage Limitation and Water Conservation Rules and Regulations.

**DATES:** Written comments for inclusion in the official record must be postmarked no later than June 26, 1995.

**ADDRESSES:** Written comments should be mailed to: Mr. Ronald J. Schuster, Westwide Settlement Manager, Bureau of Reclamation, PO. Box 25007 (Mail Code D-5010), Denver, Colorado 80225.

Access to the dedicated toll-free telephone number 1-800-861-5443, has been extended through June 26, 1995, for those wishing to make oral comments on the rules. Comments will be recorded on tape and transcribed by a court reporter, and will be part of the official record. Statements are limited to 10 minutes and must include the commentator's name in order to be included in the official record. Address and affiliation are optional.

**FOR FURTHER INFORMATION CONTACT:** Concerning part 426, contact Richard Rizzi, Bureau of Reclamation, PO. Box 25007 (Mail Code D-5010), Denver, Colorado 80225, telephone (303) 236-1061 ext. 235; concerning part 427, contact Craig Phillips, Bureau of Reclamation, PO. Box 25007 (Mail Code D-5300), Denver, Colorado 80225, telephone (303) 236-1061 ext. 265.

**SUPPLEMENTARY INFORMATION:** An identical notice is published in this *Federal Register* regarding extension of comment period on the environmental impacts of the proposed rules and regulations for implementing the Reclamation Reform Act of 1982.

Dated: May 31, 1995.

**Daniel P. Beard,**  
*Commissioner.*

[FR Doc. 95-13693 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-94-P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[CS Docket No. 95-61, FCC 95-186]

#### Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Commission is required to report annually to Congress on the status of competition in the market for the delivery of video programming pursuant to Section 628(g) of the Communications Act of 1934, as amended. On May 4, 1995, the Commission adopted a Notice of Inquiry to solicit information from the public for

use in preparation of the annual assessment of the status of competition in the market for the delivery of video programming that is to be submitted to Congress by November 15, 1995. The Notice of Inquiry will provide parties with an opportunity to submit comments and information to be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

**DATES:** Comments are due by June 30, 1995, and reply comments are due by July 28, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Marcia Glauberman, Cable Services Bureau (202) 416-1184 or Martin L. Stern, Office of the General Counsel (202) 416-0865.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Inquiry in CS Docket No. 95-61, FCC 95-186, adopted May 4, 1995, and released May 24, 1995. The complete text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service ("ITS, Inc."), (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

#### Synopsis of the Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 548(g), requires the Commission to deliver an annual report to Congress concerning the status of competition in the market for the delivery of video programming. The Commission submitted its first to Congress in September 1994. First Report, CS Docket No. 94-48, summarized in FR 64657 (December 15, 1994). The Commission expects to submit the 1995 Competition Report to Congress by November 15, 1995.

2. When Congress adopted the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") and added Section 628(g) to the Communications Act, it indicated a preference for competition over regulation of cable television systems. Congress found, however, that sufficient competition to local cable television systems did not exist and, as a result, cable operators had undue market

power compared to that of consumers and video programmers. Accordingly, Congress enacted the 1992 Cable Act to promote competition and to ensure that consumer interests are protected in the absence of effective competition to cable television. A critical element of this regulatory framework is to promote the emergence of competition over time by fostering the entry of alternative multichannel video programming distributors ("MVPDs"). The annual competition report to Congress provides an opportunity for the Commission to summarize the status of cable television and other video distributors, monitor changes in the competitive environment and evaluate the progress that is being made in promoting and developing a competitive marketplace for the delivery of video programming services.

3. The Notice of Inquiry ("Notice") is designed to solicit comments and information that the Commission can use to prepare its 1995 Competition Report. Specifically, the Notice requests information concerning the cable industry, existing and potential competitors to cable systems, barriers to entry by new competitors, technological advances and the prospects for increased competition in the market for the delivery of video programming. The Commission expects to use the information that is submitted by commenters to supplement publicly available information and relevant comments that have been filed in other Commission proceedings. The Notice highlights a wide range of competitive issues, and offers parties an opportunity to submit information on these issues, as well as any other information they believe is relevant to an evaluation of competition in market for the delivery of video programming.

4. The Notice begins with an overview of the 1994 Competition Report, including a summary of the framework for analyzing competition in the market for delivered video programming and the findings regarding the status of competition as of September 1994. The 1994 Competition Report's analytical framework can be summarized as follows: (1) Definition of the market; (2) analysis of the status of current and potential future participants in the market; (3) examination of the conduct of the firms in the market; (4) analysis of market structure conditions that may affect competition, with particular emphasis on impediments to competition and regulatory efforts to promote competition; and (5) evaluation of the overall economic performance of the market. In addition, on the basis of its analysis of the status of existing and potential competitors to local cable

systems, the Commission stated that while competitors were emerging, alternative video programming distributors were not available to a sufficient number of subscribers to create a competitive environment in most markets.

5. The Notice then seeks information and comment on specific issues in preparation for the 1995 Competition Report. The Commission first addresses the relevant product and geographic markets for delivered video programming. In the 1994 Competition Report, the Commission used the 1992 Cable Act's definition of "multichannel video programming service" as a starting point for the relevant product. This definition includes cable television, multipoint multichannel distribution service ("MMDS" or "wireless cable"), direct broadcast satellites ("DBS") and receive-only satellite dishes. The Commission also analyzed the status of other MVPDs that were not included in the statutory definition, such as satellite master antenna television ("SMATV") systems and video dialtone ("VDT") service, and other video programming distribution media as potential substitutes for cable services. With respect to the geographic market, the Commission determined that it seemed reasonable to define it, at least tentatively, as the local franchising area, although over time this definition may be broadened. The Commission seeks comment on whether these definitions remain relevant or whether a reassessment of the appropriate definitions of product and geographic markets is required.

6. The Notice then requests data and information about the cable television industry, entities using other distribution technologies that are already in the market, entities that are potential entrants in this market and other technologies that might impact the nature of competition in the market for delivery of video programming services. Commenters are invited to provide information regarding the cable industry, including cable overbuilds, wireless cable systems, SMATV systems, direct-to-home satellite services, such as DBS and home satellite dishes ("HSDs"), and VDT services. The Notice asks a variety of questions concerning each of these video service providers and solicits information regarding barriers to entry and the nature of the services they provide. The Notice also indicates that the Commission intends to examine the effects on competition of broadcast television service, video cassette recorders ("VCRs") and interactive video and data services ("IVDS"). In the

Notice, the Commission states that it expects to explore possible entry of other types of firms into the market for the delivery of video programming, such as electric utilities, and requests comment on the likelihood of such entry and its effect on competition.

7. The Commission observes that there are technological changes and developments that may also affect the structure of the market for the delivery of video programming. In this regard, the Notice solicits information on digital compression, the hybridization of different transmission media used for the distribution of multichannel video programming and technologies that will facilitate consumer access to various distribution media and services.

8. In the Notice, the Commission requests comment on the structure of the market for the delivery of video programming and the effect of this structure on competition. The Commission expects to explore the status of horizontal concentration and vertical integration in the cable television industry and analyze the market structure conditions that may affect competition in markets for the delivery of video programming. Information is requested to help the Commission identify local markets where cable operators, currently, or may in the near future, face competition from other MVPDs. At the national level, the 1994 Competition Report provided an analysis of multiple system operator, or MSO, ownership of cable systems. The Notice seeks data regarding the number of subscribers served by individual MSOs, which will allow the Commission to continue to monitor industry concentration and to assess its effects on the video marketplace. The Commission also notes that there has been a trend towards "clustering," or regional concentration, of cable system ownership. The Notice invites comment on the competitive effects of clustering.

9. Several provisions of the 1992 Cable Act were intended to ensure that vertically integrated cable companies do not impede competition. In the Notice, the Commission solicits data to update the information presented in the 1994 Competition Report relating to vertically integrated and unaffiliated programming services. Thus, the Commission seeks information that will allow it to examine affiliation between national programming services and cable operators, determine whether alternative providers are able to acquire programming services on nondiscriminatory terms and assess the degree to which unaffiliated programmer are gaining access to cable systems. In particular, the Commission

"request[s] comment on whether the program access rules and our decisions in response to program access complaints have served their intended purpose alleviate [the] problem [that non-cable MVPDs faced in acquiring programming services on nondiscriminatory terms]."

10. The Notice further requests that commenters consider several economic market performance indicators that were used in the 1994 Competition Report to assess the current level of competition. Parties are asked to provide appropriate updates with respect to these indicators and to comment on the conclusion drawn in the 1994 Competition Report regarding these indicators and the appropriate methods for assessing market performance. The Commission also seeks comment on market structure characteristics that may increase competition or pose impediments to competition. Furthermore, comment is requested concerning economies of scale and scope in the cable industry, regulatory or technological barriers to entry into the market for the delivery of video programming and the implications of sunk cost investments for competitive entry.

11. Finally, the Notice seeks recommendations Commission actions, if any, to promote further competition in the market for delivered video programming. In this regard, parties are asked to explain how their proposals would increase competition in the delivery of video programming to consumers or enhance the programming distribution market.

#### **Administrative Matters**

##### *Ex Parte*

12. There are no ex parte or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(a)(4).

##### *Comment Dates*

13. Pursuant to applicable procedures set forth in Sections 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 30, 1995, and reply comments on or before July 28, 1995. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and

reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

#### Ordering Clauses

14. This Notice of Inquiry is issued pursuant to authority contained in Sections 4(i), 4(j) 403 and 628(g) of the Communications Act of 1934, as amended.

#### List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

**LaVera F. Marshall,**

*Acting Secretary.*

[FR Doc. 95-13643 Filed 6-2-95; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Parts 0 and 80

[CI Docket No. 95-54, FCC 95-170]

#### Inspection of Great Lakes Agreement Ships

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has adopted a *Notice of Proposed Rule Making* which proposes rules to allow vessel operators on the Great Lakes subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement) to have the inspection performed by a classification society instead of by Commission staff.

**DATES:** Comments must be filed on or before July 18, 1995, and reply comments must be filed on or before August 17, 1995.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, N.W., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** George R. Dillon of the Compliance and Information Bureau at (202) 418-1100.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, CI Docket No. 95-54, FCC 95-170, adopted April 24, 1995, and released, May 16, 1995. The full text of this *Notice of Proposed Rule Making* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Services,

2100 M Street NW, Washington, DC 20037, telephone (202) 857-3800.

#### Summary of Notice of Proposed Rule Making

1. In this Notice of Proposed Rule Making (Notice), we propose to allow owners and operators of ships subject to the annual inspection requirements of the Agreement between the United States and Canada for the Promotion of Safety on the Great Lakes by Means of Radio (Great Lakes Agreement) to have the inspection performed by a private sector classification society instead of by Commission staff. The proposed changes would reduce economic burdens on the public and the Commission by allowing mariners to arrange for an inspection at their convenience. Because of our concern that maritime safety on the Great Lakes not be compromised by this action, we are also proposing a joint study to be conducted with the United States Coast Guard and the Canadian Coast Guard on the effect of this proposal. Further, we are requesting specific comment on whether we should permit other designated private sector entities or persons to perform such inspections.

2. The Great Lakes Agreement is intended to promote safety of life and property on the Great Lakes by means of radio. It dates back to 1952 and requires, among other things, that all vessels over 20 meters (65 feet), most towing vessels, and vessels carrying more than six passengers for hire be equipped with a marine VHF radiotelephone installation. The Great Lakes Agreement requires that these installations be inspected at least once each year. The Great Lakes Agreement requires that the inspections be carried out by officers of the Contracting Governments or by either persons nominated for that purpose or organizations recognized by the Contracting Government. In other words, the Great Lakes Agreement provides specific authority allowing the United States to entrust the annual inspection to either persons or organizations other than the Commission. Presently, however, the Commission's Rules do not permit a Great Lakes Agreement inspection to be conducted by anyone other than Commission staff.

3. Additionally, the Great Lakes Agreement requires that these vessels be inspected while the vessel is in active service or within one month before the date the vessel is placed in service. Because almost all vessels on the Great Lakes must be taken out of service over the winter and operators do not wish to interrupt shipping schedules after the shipping season begins, there is a very

busy period in the spring when these vessels are being put back in service.

4. The Commission inspects approximately 490 vessels subject to the Great Lakes Agreement each year. Commission inspectors test the outpower, frequency tolerance and availability of reserve power, and conduct an operational radio check of the radiotelephone installation during the inspection. Any failure of these critical items results in the vessel failing the annual inspection and not receiving a safety certificate until the failure is corrected. An integral part of the annual inspection is to examine the connecting transmission lines, electrical cabling and control circuitry that makeup the entire radiotelephone installation to ensure that the individual components operate satisfactorily when connected together.

5. Although the inspections are relatively simple and generally take no more than an hour to complete, they are conducted to ensure that Great Lakes Agreement ships have a reliable means of distress communications in an emergency. We note, however, that improvements in the reliability of radiotelephone equipment and the industry practice of preinspection examinations have resulted in an inspection failure rate for Great Lakes Agreement vessels of only one per cent.

6. The International Maritime Organization (IMO) has adopted a resolution setting forth the minimum standards for nongovernment organizations that conduct inspections on behalf of an administration, *IMO Assembly Resolution A.739(18), Appendix 1*, "Minimum Standards for Recognized Organizations Acting on Behalf of the Administration." There are more than 40 Classification societies worldwide that inspect passenger and cargo vessels for compliance with the myriad of domestic and international regulations that vessels must comply with before leaving port. Additionally, 11 classification societies are members of the International Association of Classification Societies (IACS). The IACS grants membership status to classification societies that meet the IACS's Quality System Certification Scheme. The use of classification societies to conduct inspections on behalf of an administration is widespread. The United States, for example, is statutorily required to use the American Bureau of Shipping, or a similar United States classification society, to class vessels owned by the Federal Government. Additionally, some of IACS' members operate in the United States.

7. We propose, therefore, to permit any United States ship subject to the Great Lakes Agreement to arrange for an inspection of the radiotelephone installation by a classification society that is a member of the IACS, such as the American Bureau of Shipping. We further propose that the classification society issue a radiotelephone certificate on behalf of the Commission to the ship upon successful completion of the inspection. Because the Commission is ultimately responsible for guaranteeing that an inspection meets the requirements of the Great Lakes Agreement inspection we request specific comment on safety related questions posed in this proposal.

We believe in the principle that government should be responsive to user needs and began this proceeding to promote flexibility, remove unnecessary and inimical regulations and, most importantly, provide better service to the public. In a companion Notice of Inquiry, we are requesting comments on how inspections of large cargo vessels and small passenger vessels can be streamlined to better serve the public and to make government operations more efficient. We are proposing a significant change to the current rules and procedures regarding safety inspections and request comment on these proposals.

**Initial Regulatory Flexibility Analysis**

*Reason for Action*

The Commission proposes to permit ships subject to the Great Lakes Agreement to have the annual inspection conducted by a classification society.

*Objectives*

The Commission seeks to: promote efficiency in the Commission's service to the public and to encourage the use of private sector organizations to take over government operations wherever possible.

*Legal Basis*

The proposed action is authorized under Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. 154(i) and 303(r), and the Great Lakes Agreement, Article XII.

*Reporting, Recordkeeping and Other Compliance Requirements*

Our proposed amendment to 47 CFR 80.953 would permit owners and operators of vessels subject to the Great Lakes Agreement to use a classification society to meet a current annual inspection requirement.

*Federal Rules Which Overlap, Duplicate or Conflict With These Rules*

None.

*Description, Potential Impact, and Small Entities Involved*

Use of private sector classification societies to inspect Great Lakes Agreement vessels would allow better service to the owners and operators of such vessels, many which are small businesses, and more efficient use of scarce government resources. It would additionally encourage the creation of jobs to inspect approximately 490 vessels each year.

*Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives*

None.

**List of Subjects**

*47 CFR Part 0*

Organization and functions (Government agencies).

*47 CFR Part 80*

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**  
*Acting Secretary.*

**Proposed Rules**

Chapter I of title 47 of the Code of Federal Regulations, parts 0 and 80 are proposed to be amended as follows:

**PART 0—COMMISSION ORGANIZATION**

1. The authority citation for part 0 continues to read as follows:

**Authority:** Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. The undesignated center heading preceding §§ 0.311, 0.314 and 0.317 is revised to read as follows:

**Compliance and Information Bureau**

2a. Section 0.311 is amended by revising paragraph (f) to read as follows:

**§ 0.311 Authority delegated.**

\* \* \* \* \*

(f) The Chief of the Compliance and Information Bureau is authorized to rely on reports, documents and certificates issued by the American Bureau of Shipping or any other classification society that is a member of the International Association of Classification Societies to conduct radio inspections of vessels and to issue certificates in accordance with Regulations 11, 12 and 13 of the Great

Lakes Agreement. The Chief, Compliance and Information Bureau is further authorized to delegate this authority.

\* \* \* \* \*

**PART 80—STATIONS IN THE MARITIME SERVICES**

3. The authority citation for part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. Section 80.5 is amended by adding in alphabetical order the following definitions:

**§ 80.5 Definitions.**

\* \* \* \* \*

*Classification society.* A non-profit organization formed to conduct vessel inspections that is affiliated or associated with a particular administration.

\* \* \* \* \*

*International Association of Classification Societies (IACS).* An association representing classification societies.

\* \* \* \* \*

5. Section 80.59 is amended by revising the heading, paragraphs (a) introductory text and (a)(1), removing paragraph (a)(2), redesignating paragraph (b) as (a)(2), and adding a new paragraph (b) to read as follows:

**§ 80.59 Compulsory ship inspections.**

(a) *Application for inspection and certification by the FCC.* An application for inspection and certification and documentation that the appropriate inspection fees have been paid, must be submitted to the FCC field office serving the port where the ship is to be inspected at least three days before the proposed inspection date.

(1) FCC Form 801 must be used to apply for a ship radio inspection on board ships subject to Part II or Part III of Title III of the Communications Act or the Safety Convention. Applications for Great Lakes Agreement inspections must state the reason why a classification society could not inspect the vessel.

\* \* \* \* \*

(b) *Application for inspection and certification by a classification society.* An inspection of a ship radio station and certification of a ship subject to the Great Lakes Agreement may be made by a classification society that is a member of the IACS or by the FCC.

\* \* \* \* \*

6. Section 80.953 is amended by redesignating the text as paragraph (a), revising the first sentence of paragraph (a), removing the second sentence of paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 80.953 Inspection and certification.**

(a) Each U.S. flag vessel subject to the Great Lakes Agreement must have an inspection of the required radiotelephone installation at least once every 13 months. \* \* \*

(b) This inspection may be conducted by the FCC or by a classification society that is a member of the International Association of Classification Societies (IACS). A certificate issued by a classification society has the same standing as one issued by the FCC.

[FR Doc. 95-13491 Filed 6-2-95; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

RIN 1018-AD28

**Endangered and Threatened Wildlife and Plants; Proposal To List Three Aquatic Invertebrates in Comal and Hays Counties, Texas, as Endangered**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service proposes to list three aquatic invertebrate species known only from Comal and Hays counties, Texas, as endangered species under the Endangered Species Act of 1973, as amended (Act). The primary threat to these species is a decrease in water quantity and quality as a result of water withdrawal and other activities by humans throughout the San Antonio segment of the Edwards Aquifer. This proposal, if made final, will implement Federal protection provided by the Act for the Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle (*Stygoparnus comalensis*).

**DATES:** Comments from all interested parties must be received by August 4, 1995. Public hearing requests must be received by July 20, 1995.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the State Administrator, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ruth Stanford, Ecologist, or Alisa Shull, Fish and Wildlife Biologist (see **ADDRESSES** section) (512/490-0057).

**SUPPLEMENTARY INFORMATION:**

**Background**

The U.S. Fish and Wildlife Service (Service) proposes to list as endangered under the Endangered Species Act of 1973, as amended (Act) three aquatic invertebrate animal species with a known distribution in spring sites in Comal and Hays counties, Texas; two of the species are subterranean. Peck's cave amphipod is known from Comal Springs and Hueco Springs, both in Comal County. The Comal Springs riffle beetle is known from Comal Springs and San Marcos Springs (Hays County). The Comal Springs dryopid beetle is known from Comal Springs and Fern Bank Springs (Hays County). The water flowing out of each of these springs comes from the Edwards Aquifer (Balcones Fault Zone—San Antonio Region), which extends from Hays County on the east to Kinney County on the west. Comal Springs are located in Landa Park, which is owned and operated by the City of New Braunfels, and on private property adjacent to Landa Park. Hueco Springs and Fern Bank Springs are located on private property. San Marcos Springs are located on the property of Aquarena Springs, formerly a privately owned resort facility. Southwest Texas State University purchased the facility in 1994. Aquarena Springs continues to operate as a resort, but the university plans to increase conference facilities and provide educational and interpretive displays and to increase availability of the springs for biological and ecological research (Billy Moore, Public Affairs Director, Southwest Texas State University, pers. comm., 1995).

Peck's cave amphipod is a subterranean, aquatic crustacean. The other two species are aquatic beetles. The families to which these beetles belong live primarily in flowing, uncontaminated waters. The Comal Springs riffle beetle is a surface species in the family Elmidae. The Comal Springs dryopid beetle is the only known subterranean member of the family Dryopidae.

The first recorded specimen of the amphipod *Stygobromus* (= *Stygonectes*) *pecki* (Holsinger 1967) was collected by Peck at Comal Springs in June, 1964. Reddell collected a second specimen at

the same place in May, 1965. In 1967, Holsinger named the species *Stygonectes pecki*, in Peck's honor; the 1965 specimen, an adult female 10.5 mm (about one half inch) long, served as the type specimen. Later he included all the nominal *Stygonectes* species in the synonymy of the large genus *Stygobromus*. The Service has used "cave amphipod" as a generic common name for members of this genus, and this name was simply translated as "Peck's cave amphipod" without reference to a particular cave. Other known springs and artesian wells of the Edwards Aquifer in central Texas have been extensively sampled for amphipod crustaceans; a single specimen of Peck's cave amphipod was collected at Hueco Springs by Barr in August, 1992.

Over 300 specimens of Peck's cave amphipod have been collected since its description. Most documented specimens were netted from crevices in rock and gravel near the orifices of the three largest Comal Springs on the west side of Landa Park in Comal County, Texas. Barr collected one specimen from a fourth Comal spring run on private property adjacent to Landa Park and one specimen from Hueco Springs, about 7 km (4 miles) north of Comal Springs (Barr 1993). However, like all members of the exclusively subterranean genus *Stygobromus*, this species is eyeless and unpigmented, indicating that its primary habitat is a zone of permanent darkness in the underground aquifer feeding the springs. Above ground, individuals are easy prey for predators, but they usually take shelter in the rock and gravel crevices and may succeed in reentering the spring orifice. Barr (1993) got most specimens in drift nets at spring orifices and found them less often as she moved downstream, supporting the notion that they may be easy prey and do not likely survive for long outside the aquifer.

The Comal Springs riffle beetle is a small, aquatic beetle known from Comal Springs and San Marcos Springs. It was first collected by Bosse in 1976 and was described in 1988 by Bosse *et al.* The closest relative of *H. comalensis* appears to be a species that occurs farther to the west (Bosse *et al.* 1988).

Adult Comal Springs riffle beetles are about 2 mm (1/10 inch) long, with females slightly larger than males. Unlike the other two organisms proposed here, the Comal Springs riffle beetle is not a subterranean species. It occurs in the gravel substrate and shallow riffles in spring runs. Some riffle beetle species can fly, but the hind wings of *Heterelmis comalensis* are short and almost certainly non-functional, making the species

incapable of this mode of dispersal (Bosse *et al.* 1988). The larvae have been collected with adults in the gravel substrate of the spring headwaters and not on submerged wood as is typical of most *Heterelmis* species (Brown and Barr 1988). Usual water depth in occupied habitat is 2 to 10 cm (1 to 4 inches) although the beetle may also occur in slightly deeper areas within the spring runs. Populations are reported to reach their greatest densities from February to April (Bosse *et al.* 1988). The Comal Springs riffle beetle has been collected from spring runs 1, 2, and 3 at Comal Springs in Landa Park, and a single specimen was collected from San Marcos Springs 32 km (20 miles) to the northeast.

The Comal Springs dryopid beetle is a recently discovered species. It was first collected in 1987 and described as a new genus and species in 1992 by Barr (California State University) and Spangler (National Museum of Natural History, Smithsonian Institution). Adult Comal Springs dryopid beetles are about 3.0–3.7 mm ( $\frac{1}{8}$  inch) long. They have vestigial (non-functional) eyes and are weakly pigmented, translucent, and thin-skinned. The species is the first stygobiontic (subterranean aquatic) member of its family to be discovered (Brown and Barr 1988, Barr, *in litt.* 1990, Barr and Spangler 1992).

Collection records for the Comal Springs dryopid beetle are primarily from spring run 2 at Comal Springs, but they have also been collected from runs 3 and 4 at Comal Springs and from Fern Bank Springs about 32 km (20 miles) to the northeast in Hays County. Specimens have been collected in April, May, June, July, and August. Most of the specimens have been taken from drift nets or from inside the spring orifices. Although the larvae of the Comal Springs dryopid beetle have been collected in drift nets positioned over the spring openings, they are presumed to be associated with air-filled voids inside the spring orifices since all other known dryopid beetle larvae are terrestrial. Unlike Peck's cave amphipod, the Comal Springs dryopid beetle does not swim, and it may have a smaller range within the aquifer.

The exact depth and subterranean extent of the ranges of the two subterranean species (Comal Springs dryopid beetle and Peck's cave amphipod) are not precisely known because of a lack of methodologies available for studying karst aquifer systems and the organisms that inhabit such systems. The subterranean portion of this habitat may be a single, interconnected system that provides the area necessary for the feeding, growth, survival, and reproduction of the Comal

Springs dryopid beetle and Peck's cave amphipod, which are obligate aquatic stygobiontic species. However, no specimens of *Stygoparnus comalensis* or *Stygobromus pecki* have appeared in collections from 22 artesian and pumped wells flowing from the Edwards Aquifer (Barr 1993), suggesting that these species may be confined to small areas surrounding the spring openings and are not distributed throughout the aquifer. Barr (1993) also surveyed nine springs in Bexar, Comal, and Hays counties considered most likely to provide habitat for endemic invertebrates and found *Stygoparnus comalensis* only at Comal and Fern Bank springs and *Stygobromus pecki* only at Comal and Hueco springs.

The low water limits for survival are not known for any of these three invertebrate species. At least a single population of each species survived the drought of the middle 1950's, which resulted in cessation of flow at Comal Springs from June 13 through November 3, 1956. Hueco springs is documented to have gone dry in the past (Brune 1981; Barr 1993), and although no information is available for Fern Bank Springs, it has probably gone dry as well given its higher elevation (Glenn Longley, Edwards Aquifer Research and Data Center, pers. comm., 1993). San Marcos Springs has not gone dry in recorded history.

Although these invertebrates were not entirely extirpated by the temporary cessation of spring flow, they may have been adversely affected and are not expected to be able to survive long periods of drying (up to several years in duration) that may occur in the absence of an adequate water management plan for the Edwards Aquifer. Stagnation of water may be a limiting condition, particularly for the two stygobiontic invertebrates. Stagnation of water and/or drying within the spring runs and the photic (lighted) zone of the spring orifices would probably be limiting for the Comal Springs riffle beetle. Natural water flow is considered important to the respiration and therefore survival of these species. The two beetle species have a mass of tiny, hydrophobic (unwetable) hairs on their underside where they maintain a thin bubble of air through which gas exchange occurs (Chapman 1982). This method of respiration loses its effectiveness as the level of dissolved oxygen in the water decreases. A number of aquatic insects that use dissolved oxygen rely on flowing water to obtain oxygen from the water.

In a petition dated September 9, 1974, the Conservation Committee of the National Speleological Society

requested the Service to list Peck's cave amphipod. The species was included in a notice of review published on April 28, 1975 (40 FR 18476). A "warranted but precluded" finding regarding several species in that petition was made October 12, 1983, and published January 20, 1984 (49 FR 2485). The same petition determination has been repeated for Peck's cave amphipod in subsequent years. The species was included as a category 2 candidate in comprehensive notices of review published May 22, 1984 (49 FR 21664), January 6, 1989 (54 FR 554), and November 21, 1991 (56 FR 58804). In the latest notice of review of November 15, 1994 (59 FR 58982), it was included as a category 1 candidate.

In a petition dated June 20, 1990, and received June 21, 1990, Mr. David Whatley, Director of the City of New Braunfels Parks and Recreation Department, requested the Service to list five invertebrate taxa, including Peck's cave amphipod and four insects. The Service treated this as a second petition for the amphipod. A notice of 90-day petition finding published April 29, 1991 (56 FR 19632) announced that the petition had presented substantial information indicating that listing the Comal Springs riffle beetle and the Comal Springs dryopid beetle may be warranted, and initiated a formal status review for those species. Taxonomic uncertainties about the Comal Springs *Microcylolepus* riffle beetle and *Hexagenia* mayfly, also included in the June 21, 1990, petition, led to 90-day petition findings that were negative for those insects. The *Heterelmis* was recognized as a category 2 candidate in the November 21, 1989, notice of review, and both it and the *Stygoparnus* were recognized as category 1 candidates in the 1994 notice of review.

The present proposal constitutes a positive 1-year finding for the petitions to list the Comal Springs riffle beetle, Comal Springs dryopid beetle, and Peck's cave amphipod.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid

beetle (*Stygoparnus comalensis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* The main threat to the habitat of these aquatic invertebrates is a reduction or loss of water of adequate quantity and quality, due primarily to human withdrawal of water from the Edwards Aquifer and other activities. Total withdrawal from the San Antonio region of the Edwards Aquifer has been increasing since at least 1934, when the total well discharge was 101,900 acre-feet (Edwards Underground Water District 1989). In 1989, the total well discharge was slightly more than 542,000 acre-feet (Longley 1991; Edwards Underground Water District 1992a).

There is an integral connection between the waters in the aquifer west of the springs and the waters serving as habitat for these species at the springs. Water entering the Edwards Aquifer as far west as Kinney County would eventually exit at springs were it not for withdrawal of groundwater from wells. Water in the Edwards Aquifer flows from west to east or northeast, and withdrawal or contamination of water in the western part of the aquifer can have a direct effect on the quantity and quality of water flowing toward the springs and at the spring openings.

Prior to wells being drilled into the aquifer, the average springflow from Comal and San Marcos springs was equal to the average annual recharge. That is, almost all of the water entering the aquifer eventually exited at the springs. At present, much of the recharge is pumped out of the aquifer, and most of what is left becomes the average springflow (Guadalupe-Blanco River Authority 1988). The amount of water removed by wells is therefore a direct, one-for-one depletion of water that would otherwise exit through the springs (Guadalupe-Blanco River Authority 1988) and provide habitat for the proposed invertebrates.

The Texas Water Commission (TWC) (1989) classified the San Antonio segment of the Edwards Aquifer as a critical area in terms of its potential for groundwater problems related to overdrafting. The Commission also ranked Bexar, Comal, and Hays counties among the top 23 counties in Texas for number of active groundwater public supply systems. Human population in the region is expected to increase (Technical Advisory Panel 1990; Edwards Underground Water District 1993), which will result in increased demand for water from the aquifer.

The Texas Water Development Board has applied its model of the Edwards Aquifer to determine the maximum pumping level that would allow Comal Springs to continue to flow (Technical Advisory Panel 1990). The Board found that during a drought similar to that of the 1950's, the maximum pumpage that would allow spring flow at Comal Springs is about 250,000 acre-feet per year (less than half the current pumping rate). "At this pumping level, Comal Springs could be expected to maintain some annual flow although they may flow on an intermittent basis during a recurrence of the drought of record" (Technical Advisory Panel 1990). The Panel also stated that in the year 2000, if pumping continues to grow at historical rates and a drought of record were to occur, Comal Springs would go dry for a number of years (Technical Advisory Panel 1990). Wanakule (1990) states: "The present problem facing the Edwards Aquifer is the threat of overdrafting of the annual average recharge rate (1934-1988) of approximately 635,500 acre-feet. McKinney and Watkins (1993) evaluated the Texas Water Development Board model and other models and concluded that, without limiting withdrawal to about 200,000 acre-feet per year, Comal Springs will likely go dry for extended periods during even a minor drought. The creation of the Edwards Aquifer Authority may help to alleviate this threat to some degree (see Factor D for further discussion). The Edwards Aquifer Authority is currently subject to litigation regarding violation of the Voting Rights Act in its formation. The Texas Legislature is now considering bills designed to bring the Authority into compliance, but the outcome of this effort remains to be determined.

In 1984 and 1990, some of the higher-elevation Comal Springs ceased flowing and water levels in the index well (J-17) in San Antonio dropped to within twelve feet of the historic low of 612.5 ft that occurred in 1956 (Wanakule 1990). Because these invertebrates require relatively well-oxygenated water, a reduction or cessation of spring flows, even if standing water remained around the spring orifices, may adversely affect the species. Loss of water entirely within their habitat would result in the extirpation of these aquatic species from their native habitat.

In addition to a loss of water, a decrease in the water level in the aquifer could lead to a decreased quality of water at the springs. The Balcones Fault Zone—San Antonio Region is bounded on the south and east by a "bad water" line across which the groundwater

quality abruptly deteriorates to greater than 1000 mg/l total dissolved solids (TDS). In other words, at the bad water line, there is a transition in groundwater from fresh to saline or brackish.

Lowered water levels resulting from groundwater pumpage or decreased recharge may result in deterioration of water quality in the fresh water section of the aquifer through movement of the bad water line. The Comal and San Marcos Springs are very close to the bad water line (TWC 1989; Edwards Underground Water District 1992b) and although the data are inconclusive at present, these springs may be sensitive to intrusion of saline waters at low aquifer levels. Other possible effects of reduced springflow levels include changes in the chemical composition of the water in the aquifer and at the springs, a decrease in current velocity and corresponding increase in siltation, and increase in temperature and temperature fluctuations in the aquatic habitat (McKinney and Watkins 1993).

Another threat to the habitat of these species is the potential for groundwater contamination. Pollutants of concern include those associated with human sewage (particularly septic tanks), animal/feedlot waste, agricultural chemicals (especially insecticides, herbicides, and fertilizers) and urban runoff (including pesticides, fertilizers, and detergents). Pipeline, highway, and railway transportation of potentially harmful materials in the Edwards Aquifer recharge zone and its watershed with the attendant possibility of accidents presents a particular risk to water quality in Comal and San Marcos springs. Comal and San Marcos springs are both located in highly urbanized areas. Hueco Springs is located alongside River Road, which is heavily travelled for recreation on the Guadalupe River, and may be susceptible to road runoff and spills related to traffic. Fern Bank Springs is in a relatively remote, rural location and its principal vulnerability is probably to contaminants associated with leaking septic tanks, animal/feedlot wastes, and agricultural chemicals.

Of the counties containing portions of the San Antonio segment of the Edwards Aquifer, the potential for acute, catastrophic contamination of the aquifer is greatest in Bexar, Hays, and Comal counties because of the higher density of urbanization compared to the western counties. Although spill or contamination events that could affect water quality may occur to the west of Bexar County, dilution and the time required for the water to reach the springs may lessen the threat from that area. As aquifer levels decrease,

however, dilution of contaminants moving through the aquifer may also decrease.

The TWC reported that in 1988 within the San Antonio segment of the Edwards Aquifer, Bexar, Hays, and Comal counties had the greatest number of land-based oil and chemical spills in central Texas that affect surface and/or groundwater with 28, 6, and 4 spills, respectively (TWC 1989). As of July, 1988, Bexar County had between 26 and 50 confirmed leaking underground storage tanks, Hays County had between 6 and 10, and Comal County had between 2 and 5 (TWC 1989), putting these counties among the top five counties in central Texas for confirmed underground storage tank leaks. The TWC estimates that, on average, every leaking underground storage tank will leak about 500 gallons per year of contaminants before the leak is detected. These tanks are considered one of the most significant sources of groundwater contamination in the State (TWC 1989).

A TWC project, using the DRASTIC methodology/tool (Aller, *et al.* 1987) classified Texas aquifers statewide according to their pollution potential. The Edwards Aquifer (Balcones Fault Zone—Austin and San Antonio Regions) was ranked among the highest in pollution potential of all major Texas aquifers (TWC 1989). The project's objective was to identify areas sensitive to groundwater pollution from a contaminated land surface. The project modelled both point source and non-point source types of contamination. The area of particular concern is the Edwards Aquifer recharge zone and its watershed. The TWC (1989) also reviewed and reported on the risk to Texas aquifers from sanitary landfills, hazardous waste disposal facilities, industrial waste and sewage disposal wells, commercial feedlots, and graveyards.

The DRASTIC methodology may underestimate the importance of faults and fractures, which affect the movement of groundwater and pollutants. Faults and fractures may act as conduits and/or barriers to groundwater flow and, in the vicinity of springs, could facilitate movement of contaminants. The Comal Springs fault facilitates the movement of groundwater (and potentially pollutants) towards Comal Springs. Hueco Springs has a large local recharge component (Brune 1981) and may be more susceptible to contamination via polluted runoff than Comal or San Marcos Springs. Little information is available on the relative contribution of groundwater and local recharge to the water emerging at Fern

Bank Springs, although the temporary increase in discharge seen after storm events indicates a local recharge component (Barr 1993).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* No threat from overutilization of these species is known to exist.

C. *Disease or predation.* While individuals of these three species may be preyed upon by various predatory insects or fishes, no information indicates that this is a substantial threat to any of the three species.

D. *The inadequacy of existing regulatory mechanisms.* Invertebrates are not included on the Texas Parks and Wildlife Department's (TPWD) list of threatened and endangered species and are provided no protection by the State. Nor do the TPWD regulations contain provisions for protecting habitat of any listed species.

Traditionally, the State of Texas has had no authority to regulate withdrawal of groundwater from an aquifer. In response to a lawsuit filed against the Service by the Sierra Club (Sierra Club v. Babbitt, formerly Sierra Club v. Lujan), the Texas State Legislature passed a bill (S.B. 1477) authorizing the creation of the Edwards Aquifer Authority (Authority) and granting the Authority the power to regulate groundwater withdrawal from the Edwards Aquifer. The bill recommends limiting groundwater withdrawal from the aquifer to 450,000 acre-feet per year initially, then reducing it to 400,000 acre-feet per year by January 1, 2008, based on a model developed by the TWC. One stated goal of the bill is to provide continuous minimum springflow of at least 100 cfs at Comal and San Marcos Springs by the year 2012 to protect species that are designated as threatened or endangered under Federal or State law. However, some researchers have maintained that, even with such pumping limits, flow at Comal Springs will drop below 100 cfs, and the springs will likely go dry for extended periods in time of severe drought and probably during minor droughts (McKinney and Watkins 1993).

The bill creating the Authority gives consideration in setting minimum springflow requirements only to those species protected under Federal or State law. These invertebrates would receive no consideration under the current plan until they are listed. In addition, Comal and San Marcos Springs are the lowest elevation springs in which these invertebrates are found, and maintaining flow at Fern Bank and Hueco Springs is not a stated goal of the water withdrawal limitations. Efforts to maintain minimum springflow at Comal

and San Marcos Springs would not necessarily be sufficient to maintain flow at Hueco and Fern Bank Springs, which lie at higher elevations.

Although creation of the Edwards Aquifer Authority and development of regulations for limiting withdrawal of groundwater from the Edwards Aquifer is a positive step toward protecting the Comal and San Marcos spring ecosystems, creation of the Authority is currently a matter in litigation regarding compliance with the Voting Rights Act. It is uncertain if or when the Authority will be empowered to enforce the pumping limits dictated by the legislation, and thus whether it will be able to protect these aquatic invertebrates and other threatened and endangered species dependent upon water from the aquifer.

The major regulations affecting water quality in the San Antonio segment of the Edwards Aquifer are the Edwards Rules (31 Texas Administrative Code, Chapter 313), promulgated and enforced by the TWC (recently renamed as the Texas Natural Resource Conservation Commission). The Edwards Rules regulate construction-related activities on the recharge zone that may "alter or disturb the topographic, geologic, or existing recharge characteristics of the site" as well as any other activity "which may pose a potential for contaminating the Edwards Aquifer." The Edwards Rules regulate construction activities through review of Water Pollution Abatement Plans (WPAPs). The WPAPs do not require site-specific water quality performance standards for developments over the recharge zone nor do they address land use or impervious cover limitations. The WPAPs do not regulate activities in the aquifer contributing zone and, as yet, the Edwards Rules do not include a comprehensive plan to address the effects of cumulative impacts on water quality in the aquifer (Edwards Underground Water District 1993).

E. *Other natural or manmade factors affecting its continued existence.* The effect of droughts in south central Texas will be much more severe than previously was the case, due to the large increase in groundwater withdrawals (Wanakule 1990). These species' very limited habitat is likely to be lost through drying or decreased volume of springflow during minor or severe drought.

At present, competition is not known to be a significant threat to these species. However, two exotic snail species, *Thiara granifera* and *Thiara tuberculata* are common in the spring runs and, as grazers, may compete for food. Another exotic, the giant ramshorn

snail (*Marisa cornuarietis*), is present in two of the spring runs and may colonize the other runs at low flow levels or through transfer by humans.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation the preferred action is to list the Peck's cave amphipod (*Stygobromus pecki*), Comal Springs riffle beetle (*Heterelmis comalensis*), and Comal Springs dryopid beetle as endangered.

### Critical Habitat

Critical habitat is defined by Section 3 of the Act as— (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for Peck's cave amphipod, the Comal Springs riffle beetle, and the Comal Springs dryopid beetle at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist— (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat for these three species would not be prudent because it would not provide a conservation benefit to them, and would actually be detrimental by suggesting a misleadingly restricted view of their conservation needs.

Designation of critical habitat would not be beneficial to these species

beyond the benefits provided by listing and the subsequent evaluation of activities under section 7 of the Act for possible jeopardy. In the Service's section 7 regulations at 50 CFR Part 402, the definition of "jeopardize the continued existence of" includes "to reduce appreciably the likelihood of both the survival and recovery of the listed species," and "adverse modification" is defined as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Because these species are endemic to such highly localized areas, actions that apparently diminish water quality and quantity at the springs would be fully evaluated for their effects on the three species through analysis of whether the actions would be likely to jeopardize their continued existence. Any action that would appreciably diminish the value, in quality or quantity, of spring flows on which they depend would also reduce appreciably the likelihood of survival and recovery of the three species. The analysis for possible jeopardy applied to these species would therefore be identical to the section 7 analysis for determining adverse modification or destruction of critical habitat; no distinction between jeopardy and adverse modification for activities impacting the springs on which these species depend can be made at this time. Application of section 7 relative to critical habitat would therefore not add measurable protection to these species beyond what is achievable through review for jeopardy.

Designation of the springs and their immediate environment as critical habitat would actually be detrimental to conservation efforts for these species because it would promote the misconception that the springs are the only areas important to their conservation. Conservation efforts for these species must address a wide variety of federally funded or authorized activities (summarized in the "Available Conservation Measures" section of this proposed rule) that affect the quality and quantity of water available to these species through effects on the recharge sources and aquifer that supply water to their habitats. Nearly all of these activities will occur beyond the immediate vicinity of the springs, and some will occur many miles away. Designation of the springs as critical habitat would be misleading in implying to Federal agencies whose activities may affect these species that the Service's concern is limited only to activities taking place at the springs

occupied by the species. Designation of critical habitat for these species would therefore not be prudent.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Conservation and management of the Peck's cave amphipod, Comal Springs riffle beetle, and Comal Springs dryopid beetle are likely to involve protection and conservation of the Edwards Aquifer and spring flow at Comal Springs, Hueco Springs, San Marcos Springs, and Fern Bank Springs. It is also anticipated that listing will encourage research on critical aspects of the species' population biology.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal actions that could affect the Peck's cave amphipod, Comal Springs riffle beetle, and/or Comal Springs dryopid beetle include the funding, authorization, and implementation of projects that would reduce the quantity or quality of water within the San Antonio segment of the Edwards Aquifer or otherwise significantly affect the outlets or water output of Comal Springs in New Braunfels, Texas; San Marcos Springs in

San Marcos, Texas; Hueco Springs in Comal County, Texas; and Fern Bank Springs in Hays County, Texas. Examples of these types of activities include projects that would involve withdrawal of water from the aquifer; permits for municipal wastewater discharge; agricultural irrigation; use of pesticides and herbicides; Environmental Protection Agency National Pollutant Discharge Elimination System permits; section 18 exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act; and Corps of Engineers permits for stream crossings.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. It is anticipated that few trade permits would ever be sought or issued because these species are not known to be in trade.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed or proposed to be listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. The Service emphasizes that this action is a proposed listing, and that the guidelines presented herein are for use in the event that the listing becomes final. Should the listing become final, the discussion and outline presented here should assist landowners and managers in avoiding violation of section 9 of the Act. The Service believes that, based on the best available information, activities that

could potentially harm the Comal invertebrates and result in "take" include, but are not limited to—

- (1) Collecting or handling of the species;
- (2) Activities that may result in destruction or alteration of the species' habitat (including, but not limited to withdrawal of water from the aquifer to the point at which habitat becomes unsuitable for the species, alteration of the physical habitat within the spring runs, or physical alteration of the spring orifices or of the subsurface pathways providing water to the springs);
- (3) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other material into the springs or into areas that provide access to the aquifer and where such discharge or dumping could affect water quality; or
- (4) Herbicide, pesticide, or fertilizer application in or near springs containing the species or areas that drain into the aquifer. Careful use of pesticides in the vicinity of the springs may be necessary in some instances.

The Service believes that a wide variety of activities would not harm these species if undertaken in the vicinity of their habitats and thus would not constitute taking. In general, any activity in the contributing, recharge, or artesian zones of the Edwards aquifer that would not have potential for cumulative or acute/catastrophic decrease in water quality within the aquifer and would not involve use of water from the aquifer should not harm these species. Inquiries concerning the possible effects of specific activities should be directed to the Service's Texas State Office (see ADDRESSES, above).

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

- (1) Biological, commercial trade, or relevant data concerning any threat (or lack thereof) to Peck's cave amphipod, the Comal Springs riffle beetle, and Comal Springs dryopid beetle;
- (2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the ranges, distributions, and population sizes of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species; and

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to State Administrator, U.S. Fish and Wildlife Service (see ADDRESSES section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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 Authors: The primary authors of this rule are Ruth Stanford and Alisa Shull (see ADDRESSES section) and George Drewry, Division of Endangered Species, U.S. Fish and Wildlife Service, 452 ARLSQ, Washington DC 20240.

recordkeeping requirements, Transportation.

**Proposed Regulations Promulgation**

**PART 17—[AMENDED]**

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Crustaceans and Insects, respectively, to the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

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

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

Endangered and threatened species, Exports, Imports, Reporting and

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS:							
* Amphipod, Peck's cave.	* <i>Stygobromus</i> (= <i>Stygonectes</i> ) <i>pecki</i> .	* U.S.A. (TX) .....	* NA .....	* E	* .....	* NA	* NA
INSECTS:							
* Beetle, Comal Springs dryopid.	* <i>Stygoparnus comalensis</i> .	* U.S.A. (TX) .....	* NA .....	* E	* .....	* NA	* NA
* Beetle, Comal Springs riffle.	* <i>Heterelmis comalensis</i> .	* U.S.A. (TX) .....	* NA .....	* E	* .....	* NA	* NA

Dated: May 23, 1995.  
**Mollie H. Beattie,**  
 Director, U.S. Fish and Wildlife Service.  
 [FR Doc. 95-13457 Filed 6-1-95; 8:45 am]  
 BILLING CODE 4310-55-P

**DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**50 CFR Part 630**

[Docket No. 950522139-5139-01; I.D. 042495B]

RIN 0648-AH75

**Atlantic Swordfish Fishery; 1995 Quotas**

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

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

**SUMMARY:** NMFS proposes to change the total allowable catch (TAC) for the Atlantic swordfish fishery in accordance with the framework procedure of the regulations. This rule proposes a reduction of the directed-fishery TAC to 1,365 metric tons (mt) dressed weight for each of two semiannual periods, each of which would be divided into a drift gillnet quota of 27 mt and a longline and harpoon quota of 1,338 mt. The amount of the semi-annual longline and harpoon quota allowed to be landed would be 1,225 mt—the semi-annual quota amount less 113 mt, the estimated weight of undersized swordfish that

would be discarded dead semi-annually. The intent of this action is to protect the swordfish resource while allowing harvests of swordfish consistent with the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). NMFS is also soliciting comment on alternative management strategies for extending the fishing season.

**DATES:** Comments on this proposed rule must be received on or before July 17, 1995.

**ADDRESSES:** Copies of documents supporting this action may be obtained from and comments on the proposed rule should be sent to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Stone, 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Swordfish and its implementing regulations at 50 CFR part 630 under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

NMFS has reevaluated the annual TAC, the annual directed-fishery quota, the annual bycatch quota, bycatch limits in the non directed fishery, and the harpoon gear set-aside quotas in the Atlantic swordfish fishery in accordance with the procedures and factors specified in 50 CFR 630.24(d), including consideration of the latest stock assessment and recommendations of ICCAT. ICCAT's Standing Committee on Research and Statistics conducted a stock assessment of North Atlantic swordfish in November, 1994. The assessment report indicates the North Atlantic swordfish stock is overfished, stock biomass continues to decline, and a large reduction in yields is necessary in the immediate future if the stock is to be rebuilt to the level that supports maximum sustainable yield.

Based on the assessment findings, ICCAT adopted recommendations that include country-specific quotas that will reduce catch levels for the major harvesting nations. The recommended 1995 quota for the United States is 3,970 mt whole weight (2,984 mt dressed weight). Estimates of swordfish discarded dead are now included in the total catch quota.

In accordance with a review of the factors specified in 50 CFR 630.24(d), NMFS proposes for 1995 a decrease in TAC of 449 mt to 2,984 mt. All weights in this proposed rule are in dressed weight of swordfish unless indicated otherwise. The proposed TAC would be divided between a directed-fishery quota of 2,730 mt and a bycatch quota of 254 mt. These quotas in 1994 were 3,175 mt and 254 mt, respectively.

The directed-fishery quota would be divided into two 1,365 mt semiannual quotas for each of the 6-month periods, January 1 through June 30, and July 1 through December 31. Each of the 1,365 mt semiannual quotas would be further subdivided into a drift gillnet quota of 27 mt and a longline and harpoon quota of 1,338 mt. This allocation by gear types employs the same percentages in effect in 1994.

NMFS estimates that approximately 113 mt of swordfish semi-annually will be discarded dead, based on estimates from 1992 and 1993, recent estimated rates of discards, and expected improvement by the fleet in avoiding small fish. Therefore, the semi-annual landing quota for the longline and harpoon swordfish fishery would be the semi-annual catch quota of 1,338 mt minus the estimated semi-annual dead discards of 113 mt, or 1,225 mt for each of the two semiannual periods.

NMFS has no new information sufficient to justify changes in the bycatch quota of 254 mt or the existing 10 mt special set-aside quota for harpoon gear. Likewise, there were no new data, or new data have not been thoroughly analyzed that would warrant revision to the existing bycatch limits of 5 swordfish per trip in the squid trawl fishery and 2 swordfish per trip for all other bycatch fisheries.

This rule would revise the address of NMFS Southeast Regional Director, which has changed.

Segments of the industry have expressed concern that it may become necessary for NMFS to close some or all segments of the fishery prior to the end of the year, causing economic disruption in the industry. Therefore, NMFS is soliciting comments on alternative management methods that could extend the fishing season, should it appear that the second semiannual quota would be exceeded prior to year-end. A variety of management methods are available to prevent premature closures, so NMFS is requesting comments on the following:

(1) A set-aside of 227 mt in the second semiannual period reserved for the longline fleet. When the quota, less 227 mt, is reached, the fishery would be closed. On November 15, the longline

set-aside season would open until NMFS determines that the set-aside quota is reached;

(2) A seasonal closure of the directed fishery, such as the month of August or September, during which the possession limit would be set between 10 to 15 swordfish, rather than the 2 fish possession limit imposed after attainment of the quota in the longline fishery;

(3) Closures by area or region and by week or month to avoid catch of small fish in both the directed and incidental fisheries of each gear type;

(4) A catch limit for each vessel, by gear type, for each trip in the directed longline and drift gill net fisheries.

The set-aside option is currently being considered by NMFS for implementation by the final rule, but upon consideration of the written and public hearing comments, another option may be implemented.

NMFS is also requesting comment on the closure process for the Atlantic swordfish fishery, particularly the lengths of time between notification, end of fishing, returning to port, and unloading the catch.

#### Classification

This proposed rule is published under the authority of the ACTA. Preliminarily, the Assistant Administrator for Fisheries, NOAA, has determined that the regulations contained in this proposed rule are necessary to implement the recommendations of ICCAT and are necessary for management of the Atlantic swordfish fishery. 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 proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The 1995 TAC represents about a 13-percent reduction from the TAC of the previous 2 years. However, the TAC has not been fully utilized in the past 3 years. The overall impact in a fully utilized fishery would affect about 200 fishermen and potentially reduce their income by about 13 percent, provided there is no change in international market conditions. Under the TAC, the allowable catch is slightly higher than last year's catch; as a result, a regulatory flexibility analysis was not prepared.

This action is exempt from review under E.O. 12866.

#### List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated: May 30, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 630 is proposed to be amended as follows:

**PART 630—ATLANTIC SWORDFISH FISHERY**

1. The authority citation for part 630 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.2, “Regional Director” is revised to read as follows:

**§ 630.2 Definitions.**

\* \* \* \* \*

*Regional Director* means the Director, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432.

\* \* \* \* \*

3. In § 630.24, paragraph (b)(1) is revised to read as follows:

**§ 630.24 Quotas.**

\* \* \* \* \*

(b) \* \* \*

(1) The annual quota for the directed fishery for swordfish is 2,730 mt, dressed weight, divided into two semiannual quotas as follows:

(i) For the semiannual period January 1 through June 30—

(A) 27 mt dressed weight, that may be harvested by drift gillnet; and

(B) 1,338 mt, dressed weight, that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1,225 mt may be landed in this category.

(ii) For the semiannual period July 1 through December 31—

(A) 27 mt, dressed weight, that may be harvested by drift gillnet; and

(B) 1,338 mt, dressed weight, that may be harvested by longline and harpoon. To account for harvested fish that are discarded dead, only 1,225 mt may be landed in this category.

\* \* \* \* \*

[FR Doc. 95-13685 Filed 6-2-95; 8:45 am]

BILLING CODE 3510-22-F

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### North Star Inc. Mine Operating Plan

**AGENCY:** Forest Service, USDA.

**ACTION:** Revised notice of intent to prepare an environmental impact statement.

**SUMMARY:** Notice is hereby given that the United States Forest Service will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts that may be associated with development of the proposed North Star Project. North Star, Inc., previously known as Right Star, Inc. a California Corporation, has filed a plan of operation with the Big Bear Ranger Station, San Bernardino National Forest to expand and develop a high grade locatable limestone deposit in San Bernardino County, California. The North Star Project is located approximately 80 miles due east of Los Angeles, and approximately 3.5 miles northeast of Big Bear City. The Project will ultimately affect approximately 37 acres, and includes the following activities: mining, limestone trucking, vegetation and soil removal, blasting, loading, crushing, screening, and reclamation of disturbed land. The quarry will extend to a depth of approximately 40 feet below the level of Forest Road 3N03. Access to the site is via State Highway 18 and Forest Road 3N03. Approximately 200 tons of limestone per day would be transported to markets in California and Arizona. The USDA Forest Service is the lead Federal Agency for NEPA compliance in the preparation of the Environmental Impact Statement (EIS) for the proposed project. The following issues have been preliminarily identified for analysis: Visual quality, cultural resources, traffic, recreation, threatened, endangered and sensitive plant and wildlife species, health and safety,

economics, mineral development, air quality, and other land uses. In accordance with the National Environmental Quality Act requirements, the EIS will also consider alternatives to the proposed action. Alternatives and additional issues may be identified as a result of the public scoping process.

This notice is a request for environmental information that you or your organization feels should be addressed in the EIS. Detailed information may be included in your response. Written comments should be sent to the address below no later than June 30, 1995.

**SUPPLEMENTARY INFORMATION:** The General Mining Law of 1872 (May 10, 1872) as amended, authorizes the location and extraction of minerals, including limestone, subject to regulations prescribed by law.

Mining regulations for the Forest Service are found in 36 CFR Part 228, Subpart A, first issued on August 28, 1974.

In preparing the environmental impact statement, the Forest Service will identify and consider a range of alternatives for this site. One of these will be no development of the site. Other alternatives will consider the company proposal, and environmentally modified proposal and an environmentally constrained proposal. Alternative locations for overburdened dumps, roads, and support facilities also will be considered.

Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, San Bernardino, California is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.

4. Exploring additional alternatives.

5. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

6. Determining potential cooperating agencies and task assignments.

The mining of limestone is a significant activity on the north slope of the San Bernardino Mountains and is important to the economy of the Lucerne Valley Community. In excess of 3.5 million tons of limestone material are removed annually from quarries on both private and Federal lands. An additional 1.8 million tons of uneconomic materials are removed but re-deposited in waste dumps. The limestone mining operations on the northslope have been carried on for many years through various approvals (Plans of Operations and a variety of amendments to those plans). The need for a consolidation of plans and amendments and a need to emphasize reclamation and advanced planning has been identified.

North Star, Inc., has been bulk-sample mining at the edge of the 11 acre site. Approximately .6 of an acre has been mined to date. Mining equipment (e.g. drills, crushers, loaders) has not been left on the site. North Star proposes to expand from the current bulk sample to an anticipated 200,000 tons of product in the next 5 years, based upon market demands.

North Star Minerals, Inc., a California corporation, holds leases for Smart Ranch Carbonate Placer Mining Claims 11 and 16 from Don Fife and Associates in Lone Valley, Big Bear Ranger District (Sec 32, T3N, R2E, SBBM) all within San Bernardino County. Right Star proposes to develop a quarry on the 11 acres and conduct operations that will yield high quality screened limestone products. Access to the site is via SH 18 and Forest road 3N03. Approximately 8 trucks per day would transport 200 tons of limestone to markets in the Lucerne Valley area. The 11 acres will be used for soil stockpiles, processing facility and a benched quarry. Operations will include vegetation and soil removal, blasting, loading, hauling, crushing and screening. The quarry will extend to a depth of approximately 40 feet below the level of FS 3N03. Waste material would also be deposited on-site. Electrical power would be supplied by

a diesel generator. The staging area would be set up to accommodate a guard's camper trailer and chemical toilet for the crew. A 20 foot air-sea cargo container (for storage of small tools) and a 500 gallon diesel fuel storage tank would be in the same general location.

During a preliminary environmental analysis, it was determined that an area of Forest Service sensitive plants and their habitat exists on the North Star limestone area, and that the plants and habitat would be impacted by any developmental alternative. For the reason, it was determined that the proposal could have significant effects on the environment, and an EIS is needed.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 1995. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 45 days from the date that the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the management of the north slope of the San Bernardino Mountains participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final EIS is scheduled to be completed

by December 1995. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

**DATES:** Comments are requested on this notice concerning the scope of the analysis of the draft EIS. Comments must be received within 30 days of the publication date of this notice.

**ADDRESSES:** Submit written comments and suggestions concerning the scope of the analysis to Gene Zimmerman, Forest Supervisor, San Bernardino National Forest, 1824 S. Commerceter Circle, San Bernardino, CA 92408-3430.

**FOR FURTHER INFORMATION CONTACT:** Raj Daniel, District Minerals Officer, San Bernardino National Forest, Mill Creek Station, 34701 Mill Creek Road, Mentone, CA 92359, telephone: (909) 794-1123.

Dated: May 26, 1995.

**Gene Zimmerman,**  
*Forest Supervisor.*

[FR Doc. 95-13566 Filed 6-2-95; 8:45 am]

BILLING CODE 3410-11-M

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**Eastern Region; Illinois, Indiana, and Ohio, Michigan, Minnesota, Missouri, New Hampshire, and Maine, Pennsylvania, Vermont, and New York, West Virginia, and Wisconsin; Legal Notice of Appealable Decisions**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Deciding Officers in the Eastern Region will publish notice of decisions subject to administrative appeal under 36 CFR Part 217 in the legal notice section of the newspaper listed in the Supplementary Information section of this notice. As provided in 36 CFR 217.5, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

**DATES:** Use of these newspapers for purposes of publishing legal notices of decisions subject to appeal under 36

CFR 217 and 36 CFR 215 shall begin June 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** James Smalls, Regional Appeals and Litigation Coordinator, Eastern Region, Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, Area Code 414-297-1371.

**SUPPLEMENTARY INFORMATION:** Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR Part 217 and 36 CFR Part 215 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. As provided in 36 CFR 217.8(2) and 36 CFR 215.13(a), the timeframe for appeal shall be based on the date of publication of a notice of decision in the primary newspaper.

Decisions by the Regional Forester:

*JOURNAL/SENTINEL*, published daily in Milwaukee, Milwaukee County, Wisconsin, for decisions affecting National Forest System lands in the States of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, Wisconsin and for any decision of Region-wide impact.

Allegheny National Forest,  
Pennsylvania

Forest Supervisor Decisions:

Warren Times Observer, Warren,  
Warren County, Pennsylvania

District Ranger Decisions:

Bradford District: Bradford Era,  
Bradford, McKean County,  
Pennsylvania

Marienville District: Oil City Derrick,  
Oil City, Venango, Pennsylvania  
Sheffield District: Warren Times  
Observer, Warren, Warren County,  
Pennsylvania

Ridgway District: Ridgway Record,  
Ridgway, Elk County, Pennsylvania

Chequamegon National Forest,  
Wisconsin

Forest Supervisor Decisions:

Milwaukee Journal Sentinel,  
published daily in Milwaukee,  
Milwaukee County, Wisconsin

District Ranger Decisions:

Glidden/Hayward District: The  
Glidden Enterprise, published

- weekly in Glidden, Ashland County, Wisconsin and Sawyer County Record, published weekly in Hayward, Sawyer County, Wisconsin
- Medford District: The Star News, published weekly in Medford, Taylor County, Wisconsin
- Park Falls District: Park Falls Herald, published weekly in Park Falls, Price County, Wisconsin
- Washburn District: The Daily Press, published daily in Ashland County, Ashland, Wisconsin
- Chippewa National Forest, Minnesota
- Forest Supervisor Decisions:
- Bemidji Pioneer, published daily in Bemidji, Beltrami County, Minnesota
- District Ranger Decisions:
- Blackduck District: The American, published weekly in Blackduck, Beltrami County, Minnesota
- Cass Lake District: Cass Lake Times, published weekly in Cass Lake, Cass County, Minnesota
- Deer River and Marcell Districts: Western Itasca Review, published weekly in Deer River, Itasca County, Minnesota
- Walker District: The Pilot/Independent, published weekly in Walker, Cass County, Minnesota
- Green Mountain National Forest, Vermont
- Forest Supervisor Decisions:
- Rutland Herald, published daily in Rutland, Rutland County, Vermont
- Finger Lakes National Forest, New York
- Forest Supervisor Decisions:
- Ithaca Journal, published daily in Ithaca, Tompkins County, New York
- District Ranger Decisions:
- Manchester District: Bennington Banner, published daily in Bennington, Bennington County, Vermont; Manchester Journal, published weekly in Bennington County, Vermont and Brattleboro Reformer, published daily in Brattleboro, Windham County, Vermont
- Middlebury District: Addison County Independent, published twice a week in Middlebury, Addison County, Vermont
- Rochester District: Burlington Free Press, published daily in Burlington, Chittenden County, Vermont; Valley Reporter, published weekly in Washington County, Vermont and Randolph Herald, published daily in Windsor County, Vermont
- Hiawatha National Forest, Michigan
- Forest Supervisor Decisions:
- Daily Press, published daily in Escanaba, Delta County, Michigan
- Mining Journal, published daily in Marquette, Marquette County, Michigan
- Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan
- St. Ignace News, published weekly in St. Ignace, Mackinac County, Michigan
- District Ranger Decisions:
- Rapid River District: Daily Press, published daily in Escanaba, Delta County, Michigan
- Manistique District: Daily Press, published daily in Escanaba, Delta County, Michigan; Pioneer Tribune, published daily in Manistique, Michigan, and Mining Journal, published daily in Marquette, Marquette County, Michigan
- Munising District: Mining Journal, published daily in Marquette, Marquette County, Michigan
- Sault Ste. Marie District: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan
- St. Ignace District: Evening News, published daily in Sault Ste. Marie, Chippewa County, Michigan and St. Ignace News, published weekly in St. Ignace, Mackinac County, Michigan
- Hoosier National Forest, Indiana
- Fort Supervisor Decisions:
- Sunday Herald-Times, published in Bloomington, Monroe County, Indiana.
- District Ranger Decisions:
- Brownstown District: Sunday Herald-Times, published in Bloomington, Monroe County, Indiana.
- Tell City District: The Perry County News, published in Tell City, Perry County, Indiana
- Huron-Manistee National Forests, Michigan
- Note:** 1st newspaper listed is mandatory—other optional.
- Forest Supervisor Decisions:
- Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan; Lake County Star, published weekly in Baldwin, Lake County, Michigan; Ludington Daily News, published daily in Ludington, Mason County, Michigan; Alcona County Review, published weekly in Harrisville, Alcona County, Michigan; Manistee News Advocate, published daily in Manistee, Manistee County, Michigan
- Michigan; Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan; Crawford County Avalanche, published weekly in Grayling, Crawford County, Michigan; Oscoda Press, published weekly in Oscoda, Iosco County, Michigan; Fremont Times-Indicator, published weekly in Fremont, Newaygo County, Michigan; Ocean-Herald Journal, published daily in Hart, Mason County, Michigan; Muskegon Chronicle, published daily in Muskegon, Muskegon County, Michigan; Grand Rapids Press, published daily in Grand Rapids, Kent County, Michigan and Big Rapids Pioneer, published daily in Big Rapids, Mecosta County, Michigan
- District Ranger Decisions:
- Baldwin District: Lake County Star, published weekly in Baldwin, Lake County, Michigan and Ludington Daily News, published daily in Ludington, Mason County, Michigan
- Cadillac District: Cadillac Evening News, published daily in Cadillac, Wexford County, Michigan; Manistee News Advocate, published daily in Manistee, Manistee County, Michigan and Lake County Star, published weekly in Baldwin, Lake County, Michigan
- Harrisville District: Alcona County Review, published weekly in Harrisville, Alcona County, Michigan
- Manistee District: Manistee News Advocate, published daily in Manistee, Manistee County, Michigan
- Mio District: Oscoda County Herald, published weekly in Mio, Oscoda County, Michigan and Crawford County Avalanche, published weekly in Grayling, Crawford County, Michigan
- Tawas District: Oscoda Press, published weekly in Oscoda, Isoco County, Michigan
- White Cloud District: Remont Times-Indicator, published weekly in Fremont, Newaygo County, Michigan and Oceana-Herald Journal, published daily in Hart, Mason County, Michigan
- Mark Twain National Forest, Missouri
- Forest Supervisor Decisions:
- Rolla Daily News, published in Rolla, Phelps County, Missouri
- District Ranger Decisions:
- Ava/Cassville District: Springfield News Leader, published daily in Springfield, Greene County, Missouri
- Cedar Creek District: Fulton Sun,

- published daily in Fulton, Callaway County, Missouri
- Doniphan District: Prospect News, published weekly in Doniphan, Ripley County, Missouri
- Eleven Point District: Current Wave, published weekly in Eminence, Shannon County, Missouri
- Rolla District: Houston Herald, published weekly (Thursdays) in Houston, Texas County, Missouri
- Houston District: Houston Herald, published weekly (Thursdays) in Houston, Texas County, Missouri
- Poplar Bluff District: Daily American Republic, published daily in Poplar Bluff, Butler County, Missouri
- Potosi District: The Independent-Journal, published Thursday in Potosi, Washington County, Missouri
- Federicktown Ranger District: The Democrat-News published Thursdays in Fredericktown, Madison County, Missouri
- Salem District: The Salem News, published Tuesday and Thursday in Salem, Dent County, Missouri
- Willow Springs District: West Plains Daily Quill, published daily in West Plains, Howell County, Missouri
- Monongahela National Forest, Elkins, West Virginia
- Forest Supervisor Decisions:
- The Elkins Intermountain, published daily in Elkins, Randolph County, West Virginia.
- Cheat District: The Parsons Advocate, published weekly in Parsons, Tucker County, West Virginia.
- Gauley District: The Richwood News Leader, published weekly in Richwood, Nicholas County, West Virginia.
- Greenbrier District: The Pocahontas Times, published weekly in Marlinton, Pocahontas County, West Virginia.
- Marlinton District: The Pocahontas Times, published weekly in Marlinton, Pocahontas County, West Virginia.
- Potamac District: The Grant County Press, published weekly in Petersburg, Grant County, West Virginia.
- White Sulphur Springs District: The Register-Herald, published daily in Beckley, Raleigh County, West Virginia.
- Nicolet National Forest, Rhineland, Wisconsin
- Forest Supervisor Decisions:
- The Daily News, published daily except Saturday, Rhineland, Wisconsin
- District Ranger Decisions:
- Eagle River/Florence Districts: The Daily News, published daily except Saturday, Rhineland, Wisconsin
- Lakewood/Laona District: The Daily News, published daily except Saturday, Rhineland, Wisconsin
- Ottawa National Forest, Michigan
- Forest Supervisor Decisions:
- Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan
- District Ranger Decisions:
- Bergland District, Bessemer District, Kenton District, Ontonagon District, and Watersmeet District: Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan
- Iron River District, Iron River Reporter, published in Iron River, Iron County, Michigan
- Shawnee National Forest, Illinois
- Forest Supervisor Decisions:
- Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois
- District Ranger Decisions:
- Elizabethtown District, Jonesboro District, Murphysboro District and Vienna District: Southern Illinoisian, published daily in Carbondale, Jackson County, Illinois
- Superior National Forest, Minnesota
- Forest Supervisor Decisions:
- Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota
- District Ranger Decisions:
- Gunflint Ranger District: Cook County News-Herald, published weekly in Grand Marias, Cook County, Minnesota
- Kawishiwi Ranger District: Ely Echo, published weekly in Ely, St. Louis County, Minnesota
- LaCroix Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota
- Laurentian Ranger District: Mesabi Daily News, published daily in Virginia, St. Louis County, Minnesota; and Lake County News-Chronicle, published weekly in Two Harbors, Lake County, Minnesota
- Tofte Ranger District: Duluth News-Tribune published daily in Duluth, St. Louis County, Minnesota
- Wayne National Forest, Ohio
- Forest Supervisor Decisions:
- The Athens Messenger, published in Athens, Athens County, Ohio
- District Ranger Decisions:
- Athens District: Athens Messenger (same for Marietta Unit), published in Athens, Athens County, Ohio
- Ironton District: The Ironton Tribune, published in Ironton, Lawrence County, Ohio
- White Mountain National Forest, New Hampshire and Maine
- Forest Supervisor Decisions:
- The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire
- District Ranger Decisions:
- Ammonoosuc Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire
- Androscoggin Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire
- Evans Notch Ranger District: The Lewiston Sun, published daily in Lewiston, County of Androscoggin, Maine
- Pemigewasset Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire
- Saco Ranger District: The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire.
- Dated: May 25, 1995.
- Floyd J. Marita,**  
Regional Forester.  
[FR Doc. 95-13595 Filed 6-2-95; 8:45 am]
- BILLING CODE 3410-11-M
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- COMMISSION ON CIVIL RIGHTS**
- Agenda and Notice of Public Meeting of the Kansas Advisory Committee**
- Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 2 p.m. on Friday, June 23, 1995, at the Central Regional Office, Gateway Tower II, 400 State Avenue, Suite 908, Kansas City, KS. The purpose of the meeting is to collect information on civil rights issues in order to plan for future projects in Kansas.
- Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816-426-5253 (TTY 816-426-5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working

days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 24, 1995.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 95-13574 Filed 6-2-95; 8:45 am]

BILLING CODE 6335-01-P

### Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on Tuesday, June 20, 1995, at the Bangor Ramada Inn, 357 Odlin Road, Bangor, Maine 04401. The purpose of the meeting is to brief the Committee on the status of the Commission, the status of a draft Advisory Committee report, review civil rights issues in Maine, and select a 1995 project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Edward Darden, Acting Director of the Eastern Regional Office, 202-376-7533 (TDD 202-376-8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 25, 1995.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 95-13581 Filed 6-2-95; 8:45 am]

BILLING CODE 6335-01-P

### Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 1 p.m. and adjourn 6 p.m. on Tuesday, June 20, 1995, at the Crown Sterling Suites, 425 South Seventh Street, Minneapolis, Minnesota 55415. The purpose of the meeting is to review the draft report, "Resources Devoted to Local and Federal Civil Rights Enforcement in

Minnesota," and to discuss other civil rights issues of interest to the Advisory Committee.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Karon J. Rogers, 612-661-4713, or Constance M. Davis, Director of the Midwestern Regional Office, 312-353-8311 (TDD 312-353-8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 24, 1995.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 95-13575 Filed 6-2-95; 8:45 am]

BILLING CODE 6335-01-P

### Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 1 p.m. and adjourn 6 p.m. on Thursday, June 22, 1995, at the Great Southern Hotel, 310 South High Street, Columbus, Ohio. The purpose of the meeting is to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Grace Ramos, 614-466-6715, or Constance M. Davis, Director of the Midwestern Regional Office, 312-353-8311 (TDD 312-353-8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 24, 1995.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 95-13576 Filed 6-2-95; 8:45 am]

BILLING CODE 6335-01-P

### Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and

regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will be held from 1 p.m. until 6 p.m. on Tuesday, June 27, 1995, at the Milwaukee Hilton, 509 W. Wisconsin Avenue, Milwaukee, Wisconsin. The purpose of the meeting is to discuss current issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Kimberly Shankman, 414-748-8739 or Constance M. Davis, Director of the Midwestern Regional Office, 312-353-8311 (TDD 312-353-8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 26, 1995.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 95-13580 Filed 6-2-95; 8:45 am]

BILLING CODE 6335-01-P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

#### Action Affecting Export Privileges; Rolando Franco; Order Denying Permission to Apply for or Use Export Licenses

On December 13, 1994, Rolando Franco (Franco) was convicted in the U.S. District Court for the District of New Jersey of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991, Supp. 1993, and Pub. L. No. 103-277, July 5, 1994)) (the Act).<sup>1</sup> Specifically, Franco was convicted on one count of knowingly and willfully violating the terms of an Order previously issued by the Department of Commerce on July 22, 1992, which denied Franco all U.S. export privileges for a period of five years.

Section 11(h) of the Act, provides that, at the discretion of the Secretary of Commerce,<sup>2</sup> no person convicted of

<sup>1</sup>The Act expired on August 20, 1994. Executive Order 12924 (59 Fed. Reg. 43437, August 23, 1994) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991)).

<sup>2</sup>Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the

violating the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 C.F.R. Parts 768-799 (1995)) (the Regulations) for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the Act, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any export license previously issued to such a person.

Having received notice of Franco's conviction for violating the Act, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Franco permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on December 13, 2004. I have also decided to revoke all export licenses issued pursuant to the Act in which Franco had an interest at the time of his conviction.

Accordingly, it is hereby ordered.

I. All outstanding individual validated licenses in which Franco appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Franco's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until December 13, 2004, Rolando Franco, 195 Willet Avenue, South River, New Jersey 08882, hereby is denied all privileges of participating, directly or

indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) as a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in Section 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Franco by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in Section 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) in any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if

the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until December 13, 2004.

VI. A copy of this Order shall be delivered to Franco. This Order shall be published in the **Federal Register**.

Dated: May 25, 1995.

**Eileen Albanese,**

*Acting Director, Office of Exporter Services.*

[FR Doc. 95-13593 Filed 6-2-95; 8:45 am]

BILLING CODE 3510-DT-M

## Foreign-Trade Zones Board

[Docket 27-95]

### Foreign-Trade Zone 142, Camden, New Jersey, Proposed Foreign-Trade Subzone, Mobil Corp. (Oil Refinery), Paulsboro, New Jersey

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Jersey Port Corporation, grantee of FTZ 142, requesting special-purpose subzone status for the oil refinery complex of Mobil Corporation (Mobil), located in the Paulsboro, New Jersey, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 24, 1995.

The refinery complex (678 acres) consists of 2 sites in Gloucester County, New Jersey: Site 1—main refinery complex, located on the Delaware River near Paulsboro, New Jersey, some 10 miles south of Philadelphia; Site 2—MTBE and light cycle oil storage facility located within GATX Terminals Corporation storage facility, adjacent to the refinery. The refinery (140,000 barrels per day; 600 employees) is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, distillates such as diesel fuel and fuel oil, lubricating oil, residual fuels and naphthas. Petrochemical feedstocks include methane, ethane, mixed butanes, and propane. Refinery by-products include asphalt, petroleum coke and sulfur. All of the crude oil (89% of inputs), some feedstocks, and some blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate

Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act. Because of a recent Bureau of Export Administration reorganization, this responsibility now rests with the Director, Office of Exporter Services. Subsequent regulatory references herein to the "Director, Office of Export Licensing," should be read as meaning "Director, Office of Exporter".

(nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from 5.25¢ to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), 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 August 4, 1995. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 21, 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, 3131 Princeton Pike, Bldg. #6, Suite 100, Trenton, NJ 08648  
 Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: May 26, 1995.

**John J. Da Ponte, Jr.,**  
*Executive Secretary.*

[FR Doc. 95–13701 Filed 6–2–95; 8:45 am]  
 BILLING CODE 3510–DS–P

**International Trade Administration**  
**[A–588–038]**

**Bicycle Speedometers From Japan; Final Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On January 31, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers one manufacturer/exporter, Cateye Co., Ltd. (Cateye), and the period November 1, 1992 through October 31, 1993.

We gave interested parties an opportunity to comment on our

preliminary results. We received comments from the respondent, Cateye. Based on our analysis of the comments received, the final results of this review have changed from those presented in the preliminary results of review.

**EFFECTIVE DATE:** June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 482–6312/3814.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 31, 1995, the Department published in the **Federal Register** (60 FR 5898) the preliminary results of its administrative review of the antidumping finding on bicycle speedometers from Japan (37 FR 24826, November 22, 1972). On February 27, 1995, we received comments from the respondent, Cateye. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

**Scope of the Review**

Imports covered by the review are shipments of bicycle speedometers. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 9029.20.20, 9029.40.80, and 9029.90.40. HTS item numbers are provided for convenience and Customs purposes. Our written description remains dispositive.

The review covers the shipments of Cateye, a manufacturer/exporter of bicycle speedometers during the period November 1, 1992 through October 31, 1993.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results as provided by section 353.38 of the Department's regulations. We received comments from the respondent, Cateye.

*Comment 1:* Cateye commented that in the preliminary calculations the Department inappropriately included sales in the home market data base that occurred outside the period of review.

*Department's Response:* We agree and have corrected the programming accordingly.

*Comment 2:* Cateye commented that for certain models sold in the United States, we failed to compare the most similar merchandise sold in the home market.

*Department's Response:* We agree that for the models mentioned in Cateye's comment, we failed to compare models sold in the United States with the most similar merchandise sold in the home market. The most similar merchandise for models with black cases sold in the United States are home market models with black cases, and the most similar merchandise for models with colored cases sold in the United States are home market models with colored cases. We have recalculated our results accordingly.

**Final Results of Review**

As a result of our review, we have determined that the following margin exists for the period November 1, 1992 through October 31, 1993:

Manufacturer/exporter	Margin (percent)
Cateye Co., Ltd .....	1.44

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until publication of the final results of the next administrative review: (1) The cash deposit rate for the reviewed company will be 1.44 percent;

(2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 26.44 percent, which is the "new shipper" rate established in the first administrative review in accordance with the Court of International Trade's (CIT's) decisions in *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993), and *Federal Mogul Corporation and the Torrington Company v. the United States*, 822 F. Supp. 782 (CIT 1993). We are basing the "all others" rate on the "new

shipper" rate established in the first final results of administrative review published by the Department (47 FR 28978, July 2, 1982) because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a) of the Act, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22.

Dated: May 26, 1995.

**Susan G. Esserman,**  
Assistant Secretary for Import  
Administration.

[FR Doc. 95-13702 Filed 6-2-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-549-813]

### Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit From Thailand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michelle Frederick or Jennifer Katt, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0186 or 482-0498, respectively.

#### Final Determination

We determine that imports of canned pineapple fruit (CPF) from Thailand are

being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the "Act") (1994). The estimated weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

#### Case History

Since our affirmative preliminary determination and postponement of the final determination on January 4, 1995 (60 FR 2734, January 11, 1995) (*Preliminary Determination*), the following events have occurred:

On January 20, 1995, Maui Pineapple Company, Ltd. and the International Longshoremen's and Warehousemen's Union (the petitioners) alleged a ministerial error in the Department's preliminary determination calculations regarding Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively Dole). The error was found to constitute a significant ministerial error because the correction resulted in a difference between a dumping margin of *de minimis* and a margin greater than *de minimis*. See § 353.15(g)(4)(ii) of the Department's Proposed Regulations (57 FR 1131, January 10, 1992). An amended preliminary determination was issued on February 14, 1995 (60 FR 9820, February 22, 1995).

The four respondents in this investigation, Dole, The Thai Pineapple Public Co., Ltd. (TIPCO), Siam Agro Industry Pineapple and Others Co., Ltd. (SAICO), and Malee Sampran Factory Public Co., Ltd. (Malee), submitted revisions to their responses, and/or revised computer tapes that corrected clerical errors discovered at verification in January, February, March and April 1995.

We conducted verifications of TIPCO, SAICO and Malee's sales and cost questionnaire responses in Thailand in February and March 1995. Verifications of Dole's sales and cost responses were conducted in Belgium, Thailand, Hong Kong, and the United States in January, February and March 1995.

Dole, TIPCO, SAICO, Malee and the petitioners submitted case briefs on April 26, 1995, and rebuttal briefs on May 3, 1995. At the request of both the petitioners and Dole, a public hearing was held on May 10, 1995.

#### Scope of the Investigation

The product covered by this investigation is canned pineapple fruit (CPF). For the purposes of this investigation, CPF is defined as pineapple processed and/or prepared into various product forms, including

rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*, juice-packed). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

#### Period of Investigation

The period of investigation ("POI") is January 1 through June 30, 1994, for TIPCO, SAICO and Malee; and January 2 through June 18, 1994, for Dole (see Memorandum from Gary Taverman to Barbara R. Stafford, dated August 18, 1994).

#### Applicable Statute and Regulations

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.

#### Such or Similar Comparisons

We have determined that all products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the third country market<sup>1</sup> to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire, on file in Room B-099 of the main building of the Department of Commerce. In accordance with 19 CFR 353.58, we made comparisons at the same level of trade, where possible. Where we were not able to match sales at the same level of trade, we made comparisons across levels of trade.

Based on the functional differences between Dole's U.S. and German customers, we continue to consider Dole's sales of CPF to be made at two distinct levels of trade in both the U.S. and German markets. (*See Preliminary Determination and Import Administration Policy Bulletin 92/1*, dated July 29, 1992.) The first level is comprised of sales to customers in the retail and food service sectors (Level I); the second is comprised of sales to customers in the industrial sector (Level II).

<sup>1</sup> Third country markets were used because none of the four respondents had a viable home market.

### *Fair Value Comparisons*

To determine whether sales of CPF from Thailand to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

As stated in our preliminary determination, Dole has reported all of its U.S. sales of subject merchandise, including those of Philippine origin and re-sales of CPF Dole purchased from unrelated producers in Thailand. We have continued to exclude these sales by weighing the dumping margin for each Universal Product Code (UPC) category by both (1) the ratio of shipments of CPF from Thailand to the total volume shipped from both Thailand and the Philippines during the last seven accounting periods of 1993, and (2) the ratio of shipments of Dole-produced product to the total volume of Dole-produced and purchased product shipped to the United States during 1993, respectively. For further discussion, see the *Preliminary Determination* and Comment 8 in the "Interested Party Comments" section of this notice.

For those unreported U.S. sales by TIPCO, SAICO and Malee presented or discovered during verification, we are applying the average of all positive margins to the quantities sold as best information available (BIA). See Comment 2 below.

### *United States Price*

For Dole, TIPCO, SAICO and Malee we calculated USP according to the methodology described in our preliminary determination, with the following company-specific exceptions:

#### *A. Dole*

1. We excluded all sales made to military commissaries from our calculation of USP because we determined that these sales do not represent the sale to the first unrelated purchaser. In this channel of trade, the first unrelated purchaser of CPF is a distributor for the U.S. military. This distributor takes title and physical possession of the merchandise before reselling it to military commissaries. Dole's sales to the distributor were included in our calculation of USP.

2. In the *Preliminary Determination* we stated that Dole would be required to report as U.S. sales, certain shipments pursuant to a long-term agreement negotiated prior to the POI. Because these shipments were not reported for the preliminary determination, we

applied as BIA, the average of all positive margins to one-half of the maximum quantity specified in the agreement to be purchased during 1994. Based on our findings at verification, we determined that Dole made no shipments pursuant to the contract during the POI. Therefore, Dole did not fail to report these sales and we have removed these sales from our margin calculation.

3. We recalculated direct selling expenses for the "warehouse club" channel of trade to reflect the allowance confirmed at verification.

4. We recalculated inventory carrying costs using a publicly available representative Thai baht borrowing rate for that period of time the merchandise was held in inventory in Thailand. For the period of time when the merchandise was shipped to and held in inventory in the United States, we used the short-term U.S. dollar borrowing rate confirmed at verification, because the title passed from the Thai producer to the U.S. parent at the time of shipment. For further discussion, see the Concurrence Memorandum, dated May 26, 1995, on file in Room B-099 of the main Commerce building (Concurrence Memorandum).

#### *B. TIPCO*

1. We reclassified reported rebates as discounts because it was determined that customers paid a reduced price, rather than receiving a refund of monies. See Comment 21 below.

2. We reclassified a certain expense reported as warranty expense as a discount. It was determined that a customer did not receive a reimbursement for the reported warranty claim, but rather paid a reduced price. See Comment 21 below.

3. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, we applied TIPCO's borrowing rate for short-term loans during the POI denominated in baht.

#### *C. SAICO*

1. We did not reduce USP for export bill discounts because we determined that this expense was already captured in our imputed credit calculation. See Comment 29 below.

2. As in the preliminary determination, we included certain U.S. shipments of spoiled subject merchandise because we determined them to be POI sales. See Comment 28 below.

#### *D. Malee*

1. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, we applied Malee's borrowing rate for short-term loans during the POI denominated in baht.

#### *Foreign Market Value*

As stated in our preliminary determination, we determined that the home market was not viable for any of the four respondents. In accordance with 19 CFR 353.49(b), we selected Germany as the third country market for all four respondents. We calculated FMV as noted in the "Price-to-Price" and "Price to Constructed Value (CV)" sections of this notice.

#### *Cost of Production*

Based on the petitioners' allegations, the Department found reasonable grounds to believe or suspect that sales in the comparison market were made at prices below the cost of producing the merchandise. As a result, the Department initiated investigations to determine whether Dole, TIPCO, SAICO and Malee made third country sales during the POI at prices below their respective cost of productions (COP) within the meaning of section 773(b) of the Act. See memorandum from Richard W. Moreland to Barbara R. Stafford, dated October 21, 1994.

#### *A. Calculation of COP*

We calculated the COP based on the sum of each respondent's cost of materials, fabrication, general expenses, and third country packing in accordance with 19 CFR 353.51(c). We relied on the submitted COPs, except in the following company specific instances where the costs were not appropriately quantified or valued:

#### *Dole*

1. We rejected the respondent's submitted fruit cost allocation methodology and recalculated these costs as described in Comment 7 below.

2. We increased fruit costs to include purchases of pineapple fruit on the last day of the POI, which had been excluded from the submitted fruit cost calculation.

3. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. See Comment 7 below.

4. We increased fixed overhead costs to remove a credit which was specifically related to non-subject merchandise.

5. We recalculated other materials costs to reflect the actual packing

medium which was used in each product. See Comment 17 below.

6. We adjusted fixed overhead and other materials costs for the respondent's incorrect calculation of the activity base used for these costs.

7. We recalculated general and administrative (G&A) expenses using the respondent's 1993 audited financial information. See Comment 18 below.

8. For those products where more than one COP value was reported, we calculated an average COP value for the product.

#### TIPCO

1. We rejected the respondent's submitted fruit cost allocation methodology and recalculated these costs. See Comment 7 below.

2. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. See Comment 7 below.

3. We recalculated TIPCO's G&A expense factor using the company's annual 1993 audited income statement. See Comment 22 below. As part of our calculation, we reduced 1993 G&A costs and increased cost of sales to account for the administrative costs reported as part of cost of manufacture in 1994. The 1993 selling expenses and reclassified administrative costs were approximated using information on the record.

4. We adjusted interest expense to reflect the adjustment to costs of sales discussed above.

5. For those products where more than one COP value was reported, we calculated an average COP value for the product.

#### SAICO

1. We recalculated SAICO's cost of pineapple fruit in the following manner: (a) we calculated SAICO's pineapple cost using the company's normal cost accounting methodology (see Comment 7 below); (b) we recalculated SAICO's plantation growing costs using the company's normal costing methodology with a modification for the allocation of overhead costs between subject and non-subject crops based on direct labor hours; and (c) we recalculated the cost of juice used as a packing medium.

2. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. See Comment 7 below.

3. We recalculated SAICO's fixed overhead expense based on the amortization of 1993 shutdown costs over the POI.

4. We recalculated SAICO's G&A rate to account for the omission of board of director fees.

#### Malee

1. We rejected the respondent's submitted fruit cost allocation methodology and recalculated these costs as described in Comment 7, below.

2. We adjusted fruit cost for the respondent's incorrect calculation of conversion factors.

3. We adjusted certain costs incurred prior to the split-off point which were improperly allocated. See Comment 7 below.

4. We increased overhead by including the depreciation effect of foreign exchange losses incurred on purchases of machinery and removing a credit for a reimbursement.

5. We increased G&A expenses to include the G&A expenses of Malee's parent company, which is a holding company with no operations, and inventory write-downs.

6. We adjusted certain COM offsets to reflect amounts which are more directly related to production during the POI. (See the Concurrence Memorandum for a further discussion of all of these adjustments.)

7. For those products where more than one COP value was reported, we calculated an average COP value for the product.

#### B. Test of Third Country Sales Prices

After calculating COP, we tested whether, as required by section 773(b) of the Act, each respondent's third country sales of subject merchandise were made at prices below COP, over an extended period of time in substantial quantities, and whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. On a product specific basis, we compared the COP (net of selling expenses) to the reported third country prices, less any applicable movement charges, rebates, and direct and indirect selling expenses. To satisfy the requirement of section 773(b)(1) of the Act that below-cost sales be disregarded only if made in substantial quantities, we applied the following methodology. If over 90 percent of a respondent's sales of a given product were at prices equal to or greater than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." If between ten and 90 percent of a respondent's sales of a given product were at prices equal to or greater than the COP, we discarded only the below-cost sales, provided sales of that product were also found to be made over an extended period of time. Where we found that more than 90

percent of a respondent's sales of a product were at prices below the COP, and the sales were made over an extended period of time, we disregarded all sales of that product, and calculated FMV based on CV, in accordance with section 773(b) of the Act.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we do not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time, *i.e.*, where sales of a product were made in only two months, the extended period of time was two months; where sales of a product were made in only one month, the extended period of time was one month. See *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from the United Kingdom*, 60 FR 10558, 10560 (February 27, 1995).

#### C. Results of COP Test

We found that for certain types of CPF more than 90 percent of each respondent's third country sales were sold at below COP prices over an extended period of time. Because neither Dole, TIPCO, SAICO nor Malee provided any indication that the disregarded sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade, for all U.S. sales left without a match to third country sales as a result of our application of the COP test we based FMV on CV, in accordance with section 773(b) of the Act.

#### D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of a respondent's cost of materials, fabrication, general expenses and U.S. packing costs as reported in the U.S. sales database. In accordance with section 773(e)(1)(B)(i) and (ii) of the Act we included: (1) For general expenses, the greater of a respondent's reported general expenses, adjusted as detailed in the "Calculation of COP" section above, or the statutory minimum of ten percent of the cost of manufacture; and (2) for profit, the

statutory minimum of eight percent of the sum of COM and general expenses because actual profit on third country sales for each respondent was less than eight percent. We recalculated each respondent's CV based on the methodology described in the calculation of COP above. In addition, for Malee, we recalculated interest expense using the company's 1993 consolidated financial statements.

#### *Price-to-Price Comparisons*

For those products for which there were an adequate number of sales at prices above the COP, we based FMV on third country prices. We calculated FMV according to the methodology described in our preliminary determination, with the following company-specific exceptions:

#### *Dole*

1. We excluded a single, small volume sale from the calculation of FMV because we determined this sale was outside the ordinary course of trade. See Comment 9 below.

2. We excluded certain sales from our calculation of FMV where Dole knew at the time of sale that the merchandise would be delivered to an ultimate location outside of Germany. For further discussion, see the Concurrence Memorandum.

3. We recalculated credit incurred on sales denominated in deutsche marks using a publicly available representative equivalent of the German prime rate for the POI as the short-term borrowing rate.

4. We recalculated inventory carrying costs using a publicly available representative baht borrowing rate for that period of time the merchandise was held in inventory in Thailand. For that period of time when the merchandise was shipped to and held in inventory in Europe, we used the short-term borrowing rate confirmed at verification. For further discussion, see the Concurrence Memorandum.

5. We used the date of the final determination for all missing payment dates in our calculation of imputed credit.

6. We corrected a clerical error regarding the calculation of pre-sale movement expenses. In addition, we reclassified all movement, import duty, and warehousing expenses associated with certain sales made prior to importation as post-sale expenses. See Comment 12 below.

#### *TIPCO*

1. We recalculated credit expenses using the interest rate applicable to the currency in which the sale was

incurred. For sales denominated in U.S. dollars, the U.S. interest rate was based on TIPCO's dollar denominated short-term loans during the POI. For sales denominated in deutsche marks, we based the interest rate on a publicly available representative German short-term borrowing rate in effect during the POI.

2. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. In addition, we applied TIPCO's actual baht denominated short-term borrowing rate for the POI.

#### *SAICO*

1. We recalculated credit expenses using the interest rate applicable to the currency in which the sale was incurred. Because SAICO had no dollar denominated short-term borrowings during the POI, the U.S. interest rate was based on the average prime rate charged by the 25 largest U.S. banks on short-term business loans for the period January through June 1994.

2. We included one third country sale presented at the start of verification in our calculation of FMV because the quantity involved was insignificant and all the charges and adjustments associated with this sale were verified.

3. We excluded certain sales from our calculation of FMV where SAICO knew at the time of sale that the merchandise would be delivered to an ultimate location outside of Germany. For further discussion, see the Concurrence Memorandum.

#### *Malee*

1. We recalculated credit expenses using the interest rate applicable to the currency in which the sale was incurred. Because all sales to the United States and Germany were made in U.S. dollars, the U.S. interest rate was based on Malee's actual weighted-average U.S. dollar denominated short-term borrowing rate in effect during the POI.

2. We recalculated inventory carrying costs based on the actual cost of manufacture of the inventory, rather than the selling price. We applied Malee's actual baht denominated short-term borrowing rate for the POI.

#### *Price-to-CV Comparisons*

Where, for TIPCO, SAICO and Malee, we made CV to purchase price comparisons, we deducted from CV the weighted-average third country direct selling expenses and added the U.S. product specific direct selling expenses. We adjusted for differences in commissions in accordance with 19 CFR 353.56(a)(2) as follows:

Where commissions were paid on some third country sales, we deducted from CV both (1) indirect selling expenses attributable to those sales on which commissions were not paid; and (2) commissions. The total deduction was capped by the amount of the commission paid on the U.S. sales in accordance with 19 CFR 353.56(b)(1) (1994). Where no commissions were paid on third country sales, in accordance with 19 CFR 353.56(b)(1), we deducted the lesser of either (1) the amount of the commission paid on the U.S. sale; or (2) the sum of the weighted average indirect selling expenses paid on the third country sales. Finally, the amount of the commission paid on the U.S. sale was added to FMV in accordance with 19 CFR 353.56(a)(2).

Where we compared Dole's ESP transactions to CV, we made deductions for the weighted-average third country direct selling expenses. We also deducted from CV the weighted-average third country indirect selling expenses. This deduction was capped by the amount of U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b) (1) and (2).

#### *Currency Conversion*

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York, pursuant to 19 CFR 353.60.

#### *Verification*

As provided in section 776(b) of the Act, we verified information provided by Dole, TIPCO, SAICO and Malee by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

#### *Interested Party Comments*

##### *General Issues*

##### *Comment 1*

TIPCO, SAICO and Malee argue that if inadequate above-cost sales of a given comparison market model are found as a result of the COP test, the Department should look for another similar model with adequate above-cost sales rather than go directly to CV. Although TIPCO, SAICO and Malee recognize that their arguments are at odds with the Department's Policy Bulletin 92/4, they argue that the Department's policy is flawed and should be changed for this final determination. TIPCO, SAICO and Malee assert that although the statutory definition of "such or similar merchandise" contained in section

771(16) of the Act does not include adequate sales above cost as a criterion of similar merchandise, it does not preclude the Department from making product matches with regard to cost considerations.

In addition, TIPCO, SAICO and Malee contend that, pursuant to *Koyo Seiko Co. v. United States*, 810 F. Supp. 1287, 1290 (CIT 1993), *rev'd on other grounds*, 36 F.3d 1565 (Fed. Cir. 1994), the Department must consider all potential model matches and avoid the use of CV whenever possible. Further, the respondents claim that considering COP in the matching procedure would not be burdensome to the Department because the only additional work would be in switching lines of computer code so that the product matching concordance is applied after, rather than before, the below-cost sales test. Finally, TIPCO, SAICO and Malee argue that the statute strongly favors the use of price-to-price comparisons whenever possible. Therefore, these respondents contend that the Department should base FMV on comparison market prices as long as there are above-cost sales of similar merchandise.

The petitioners argue that the Department's policy with respect to this issue is clear. Specifically, the Department has consistently determined that the statute does not require the exhaustion of all possible model matches before resorting to CV. Furthermore, they argue that the Department has been given broad discretion in making product matching decisions. Finally, the petitioners note that the Department's practice with respect to this issue has been upheld by the Court of International Trade (CIT). See *Zenith Electronics Corp. v. the United States*, 872 F. Supp. 992 (CIT 1994) (*Zenith*).

#### DOC Position

We agree with the petitioners. The Department's practice is to proceed directly to constructed value if the most similar match fails the cost test. Although section 773(a) of the Act expresses a preference for using the price of such or similar merchandise as the FMV before resorting to CV, section 773(b) of the Act directs the Department to resort immediately to CV if, after disregarding sales below cost, the remaining sales are inadequate as the basis for FMV. See, e.g., *Final Determination of Sales at Less Than Fair Value: Stainless Steel Angle from Japan*, 60 FR 16608, 16616 (March 31, 1995), and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty*

*Administrative Review, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10936 (February 28, 1995). Furthermore, the Department's practice on this issue was upheld in *Zenith* where the CIT rejected the argument, similarly made here by the respondents, that if any merchandise meeting one of the definitions of "such or similar" under section 771(16) of the Act survives the cost test, such merchandise would be used for price comparison purposes. See *Zenith*, 872 F. Supp. at 999. As the Court stated, once the product matches are established and the COP test is completed, the Department is not required to reexamine all of the undifferentiated product data in order to make new matches and price comparisons on the basis of whatever subset of lower-ranked such or similar merchandise survives the COP test. The respondents' reliance on *Koyo Seiko* therefore is misplaced. In that case the Court rejected the Department's resorting to CV when initial attempts at most similar model matches failed; the case did not involve resorting to CV due to failure to pass the COP test. See *Zenith*, 872 F. Supp. at 999n.8.

In this proceeding, therefore, the Department properly used CV for those product match comparisons that failed the COP analysis.

#### Comment 2

The petitioners contend that the Department should include in its calculation of USP the unreported U.S. sales to Puerto Rico made by TIPCO, SAICO and Malee that were presented at or discovered during verification. To derive the expenses associated with these sales, the petitioners argue that the Department should reduce the per unit value for each unreported sale by the highest charges and adjustments reported by each company in the U.S. sales listing. The petitioners contend that the highest deductions are appropriate because shipments to Puerto Rico pass through the Panama Canal thus incurring additional expenses. In addition, for TIPCO the petitioners contend that an additional deduction for certain expenses noted on the invoice is appropriate.

TIPCO, SAICO, and Malee argue that the Department should exclude the unreported Puerto Rican sales from the calculation of USP because these sales account for only an insignificant portion of total U.S. sales during the POI. In the event the Department determines inclusion of these sales is appropriate, TIPCO, SAICO and Malee argue that applying the highest deductions is

unwarranted. Malee asserts that the movement and selling expenses it reported for sales to Puerto Rico in its February 2, 1995, submission should be used as the best estimate of charges and expenses for the omitted sales. SAICO argues that Puerto Rican sales incur exactly the same average expenses as other U.S. sales with the same sales terms, thus the average charges and adjustments reported for U.S. sales with the same sales terms should be applied.

#### DOC Position

We agree with the petitioners that these Puerto Rican sales should be included in the calculation of USP because Puerto Rico is part of the Customs territory of the United States. However, we disagree with the petitioners that it is appropriate to apply the highest deductions to these sales. Based on our findings at verification, we conclude that the omission of these sales was inadvertent. Thus, we are applying the average of all positive margins for each company to each of the unreported Puerto Rican sales as BIA.

#### Comment 3

TIPCO, SAICO and Malee argue that the Department should calculate imputed credit costs using a weighted average short-term borrowing rate which reflects the currency in which the sale was invoiced. The respondents note that this methodology is consistent with the Department's policy expressed in the *Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand*, 60 FR 10552 (February 27, 1995). Malee asserts that the Department should use either the dollar denominated short-term borrowing rate calculated at verification or apply a U.S. dollar short-term interest rate obtained from public information.

TIPCO argues that dollar denominated short-term borrowing rate presented in its case brief should be used to calculate the imputed credit expense for all U.S. dollar and deutsche mark denominated sales. SAICO had no dollar denominated short-term borrowings during the POI.

#### DOC Position

We agree with TIPCO and Malee, in part. We have applied the actual weighted-average dollar denominated short-term borrowing rates calculated for Malee and TIPCO to all U.S. and German sales invoiced in U.S. dollars. Because SAICO had no dollar denominated borrowings during the POI, we are applying, as a publicly available representative U.S. dollar short-term interest rate, the average

prime rate charged by the 25 largest U.S. banks on short-term business loans for the period January through June 1994.

We disagree, with TIPCO, however, that it is appropriate to apply a dollar rate to those German sales invoiced in deutsche marks. Because these German sales are deutsche mark-denominated transactions, it is appropriate to apply a deutsche mark-denominated short-term borrowing rate to determine the credit costs associated with these transactions. Because TIPCO had no deutsche mark-denominated borrowings during the POI, we have applied a publicly available representative German short-term borrowing rate for the POI.

#### Comment 4

SAICO, Malee, and the petitioners request that a number of corrections presented at, and found during, the sales verifications should be incorporated into the Department's calculations of the final margins.

#### DOC Position

All corrections listed in the respondents' and the petitioners' case briefs with respect to the sales were confirmed on-site at verification and were incorporated in the Department's calculation of the final margin.

#### Comment 5

TIPCO, SAICO, and Malee argue that a particular proprietary payment should be allowed as an adjustment to COP and CV. Alternatively, if the Department chooses to disallow these payments for purposes of computing costs, the three respondents claim that the payments should be treated as sales price adjustments.

The petitioners believe that no adjustment should be made for the payments because the Department did not verify that these payments were related in any way to the production of CPF.

#### DOC Position

Because of the business proprietary nature of this item, we have addressed the parties' comments and analyzed the issue in detail in the proprietary concurrence memorandum. Our determination was to allow the payments as an offset to the respondents' submitted COP and CV figures.

#### Comment 6

Each of the four respondents claims that providing accurate cost information is not the main purpose of its normal fruit cost allocation methodology; rather each company's allocation methodology was devised to achieve certain

managerial goals. The respondents argue that their normal allocation methodologies therefore result in the misallocation of fresh pineapple fruit costs and generate cost figures that bear no relationship to the actual costs incurred.

Consequently, each respondent submitted alternative fruit cost methodologies, based on the relative weight of fresh pineapple fruit in CPF and juice products, that result in a lower fruit cost being allocated to CPF. According to the respondents, use of a weight-based fruit cost allocation methodology is appropriate in the context of this antidumping proceeding because it is based on a non-distortive, neutral, physical criterion, *i.e.*, weight. Dole also argues that its submitted methodology is consistent with its treatment of other shared operating and overhead costs, which are allocated among products on the basis of weight. Furthermore, the respondents argue that use of a weight-based methodology is appropriate because the petitioners use such a methodology for tax purposes, elevating the practice to an acknowledged and accepted industry norm.

In addition to arguing that their normal fruit cost allocation methodologies are inappropriate, the respondents argue that use of a value-based methodology also would be inappropriate. One respondent, in particular, argues that although its normal allocation methodology is based on an estimate of relative sales value, such a methodology is inappropriate under general accounting principles. According to the respondents, *Cost Accounting: A Managerial Emphasis* (Hornigren and Foster 1987) (*Cost Accounting*) indicates that use of value-based allocations is discouraged in a rate-regulated setting because "it is circular reasoning to use selling prices as a basis for determining a selling price." The respondents argue that if the Department uses its normal value-based allocation of pineapple fruit costs, dumping margins would fluctuate because of changes in juice and concentrate prices.

All four respondents argue that a value-based allocation is also legally impermissible under the precedent established in *IPSCO v. United States*, 965 F.2d 1056 (Fed. Cir. 1992). The respondents contend that in *IPSCO* the Court of Appeals for the Federal Circuit held that value-based allocations inappropriately shift costs actually incurred with respect to one co-product onto another co-product. Furthermore, Dole and Malee suggest that a value-based allocation, which would result in

values being assigned to the various parts of the pineapple (*i.e.*, the shell, the core, the ends, and the cylinder), is inappropriate because they themselves do not assign values to the various parts of the fruit and because pineapples are purchased in their entirety on a per-kilogram basis.

Finally, the respondents argue that a value-based methodology would provide a loophole for companies to manipulate dumping margins. According to the respondents, a company could reduce CPF prices in non-comparison markets or in the U.S. market, or could increase prices of non-subject merchandise, any of which actions would reduce the relative sales value of the subject merchandise, thereby resulting in a reduction of allocated costs. A reduction in allocated costs, according to respondents, would result in some comparison market models surviving a below-cost sales test or in a reduction of constructed value when comparison market models remain below cost.

The petitioners argue that Department precedent supports the use of the respondents' normal cost allocation methodologies for calculating COP and CV. *See, e.g., Final Determination of Sales at Less Than Fair Value Certain Hot-Rolled Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Korea*, 48 FR 37176 (July 9, 1993) (Department adjusted the submitted data to reflect information calculated under the respondent's normal accounting system). The petitioners contend that respondents' normal allocation methodologies have been accepted by the companies' auditors as reasonable and, in turn, have been used to produce audited financial statements which are relied upon by lenders, shareholders, and Thai tax authorities. Accordingly, the petitioners argue, the respondents' normal allocation methodologies must have some factual basis to them or they would not be accepted by these parties.

With respect to the one respondent's argument that general accounting principles discourage the use of value-based cost allocations in regulatory pricing situations, the petitioners note that the reference to the Hornigren and Foster text is misplaced in this investigation because the CPF industry is not regulated. The petitioners agree, however, that if the CPF industry were regulated, sales value allocations might be distortive because prices would not be set by the marketplace.

In addition, the petitioners argue that the Department should not consider the respondents' weight-based allocation methodology as an acceptable

alternative to their normal fruit cost allocation methodologies. In previous cases, petitioners note, the Department has recognized that weight-based allocations may be inappropriate. See, e.g., *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18795 (April 20, 1994) (Department determined that weight was an inappropriate allocation basis, stating that the "use of tonnage to allocate melt shop costs, as petitioner suggests, would result in the same cost per ton regardless of the grade of steel"). Furthermore, the petitioners note that none of the respondents use the submitted weight-based methodology in their normal course of business, nor do they use it for any internal decision-making. The petitioners claim that if the submitted allocation was accurate, the respondents would certainly maintain internal reports showing such a weight-based allocation, yet they do not. In addition, the petitioners state that they are not aware of any CPF producer anywhere that allocates fruit costs based on weight in its normal accounting system. (The petitioners acknowledge using weight as the basis for calculating fruit costs for tax purposes, but note that their financial and cost accounting systems use value-based allocations. The petitioners argue that, contrary to the respondents' claims, the use of a weight-based allocation for tax purposes does not establish it as an industry standard practice.)

Additionally, the petitioners claim that a weight-based allocation does not make sense in situations such as this one where the respondents' production processes assign values to various parts of the pineapple, depending upon the product being produced, i.e., CPF or juice products. As a result, it makes no sense to use a volume-based allocation ratio to calculate costs of production for products that are produced using a value-based production process.

The petitioners argue, therefore, that a value-based allocation is appropriate for use in the instant investigation where the raw material has different parts with very different values. The petitioners cite *Cost Accounting* at 534 (Horngrén, 5th ed. 1980) for the proposition that "[t]he majority of accountants \* \* \* support allocation in proportion to some measure of the relative revenue-generating power identifiable with the individual products." Furthermore, the petitioners argue that *IPSCO* is not controlling in the instant proceeding because the facts in *IPSCO* are significantly different from the facts in this investigation.

Finally, the petitioners maintain that the potential dumping consequences suggested by the respondents are illogical. No company would decrease prices of subject merchandise in non-subject countries in order to affect the dumping margins in the United States because this would reduce profits in those countries. Neither would a company reduce U.S. prices in an attempt to reduce dumping margins because they would risk increasing these margins. The petitioners argue that the respondents would not increase concentrate prices, to allocate fruit costs away from subject merchandise because this would adversely affect their market share.

#### DOC Position

The legislative history of the COP statute states that "in determining whether merchandise has been sold at less than cost (the Department) will employ accounting principles generally accepted in the home market of the country of exportation if (the Department) is satisfied that such principles reasonably reflect the variable and fixed costs of producing the merchandise." H.R. Rep. No. 571, 93d Cong., 1st Sess. 71 (1973). Accordingly, the Department's practice is to adhere to an individual firm's recording of costs in accordance with GAAP of its home country if the Department is satisfied that such principles reasonably reflect the costs of producing the subject merchandise. See, e.g., *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22556 (May 8, 1995) ("The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise"). The Department's practice has been sustained by the CIT. See, e.g., *Laclede Steel Co. v. United States*, Slip Op. 94-160 at 21-25 (CIT October 12, 1994) (CIT upheld the Department's decision to reject the respondent's reported depreciation expenses in favor of verified information obtained directly from the company's financial statements that was consistent with Korean GAAP).

Normal accounting practices provide an objective standard by which to measure costs, while allowing the respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that a company's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative

methodologies that more accurately capture the costs incurred. See, e.g., *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21952 (May 26, 1992) (Department adjusted a company's U.S. further manufacturing costs because the company's normal accounting methodology did not result in an accurate measure of production costs).

In the instant proceeding, the respondents want the Department to reject their normal allocation methodologies in favor of alternative methodologies reported during the investigation. As noted, however, the Department's practice is to rely on a respondent's books and records prepared in accordance with its home country GAAP unless these accounting principles do not reasonably reflect costs associated with production of the subject merchandise. As a result, before analyzing any alternative allocations or accounting methodologies reported by a respondent during the proceeding, the Department will determine whether it is appropriate to use the respondent's normal allocation methodologies.

In the instant proceeding, therefore, the Department examined whether each respondent's normal fruit cost allocation methodology was reasonable. In examining each respondent's books and records at verification we found that each company had used its recorded fruit cost allocation methodology for at least a number of years. Furthermore, we found no evidence that each respondent had not relied historically upon its recorded allocation percentages to compute its production costs. In addition, evidence on the record, i.e., audited financial statements, indicates that each respondent's normal allocation methodology was accepted by its independent auditors. Given the auditors' acceptance of the respondent's financial statements and any lack of evidence to the contrary, we conclude that each respondent's normal allocation methodology is consistent with generally accepted accounting principles practiced in Thailand.

Given the fact that each respondents' allocation methodology is consistent with Thai GAAP, we will accept each respondent's normal allocation methodology unless the methodology results in allocations that do not reasonably reflect the costs associated with production of CPF. The respondents have argued that their normal allocation methodologies do not reasonably reflect costs because the methodologies were designed to achieve certain managerial goals as opposed to providing accurate cost information.

While the reasons cited by the respondents for employing the allocation methodologies may have been factors in their selection, this does not necessarily make such methodologies, or the resulting allocations, unreasonable.

In *Hercules, Inc. v. United States*, 673 F. Supp. 454 (CIT 1987), for example, the Court upheld the Department's decision to rely on COP information from respondent's normal financial statements maintained in conformity with GAAP. The respondent, SNPE, had argued that the accelerated depreciation method employed in its financial statements and records was for tax purposes and did not accurately reflect SNPE's actual costs. Consequently, SNPE submitted recalculated depreciation expenses under a straight-line methodology. The Department rejected SNPE's alternate allocation methodology, which was based on unverifiable allegations that straight-line depreciation methodology would more accurately reflect the actual costs, in favor of the information contained in SNPE's verified normal records and audited financial statements. See *Hercules*, 673 F. Supp. at 490-91.

In the instant investigation, the respondents' arguments that their normal allocation methodologies are based on certain managerial goals and therefore do not accurately reflect actual costs are similarly unpersuasive. An accounting methodology designed to achieve certain managerial goals does not necessarily imply that the employed methodologies result in an unreasonable reflection of costs, particularly where a company's accounting methodology had been approved by independent auditors. In addition, as discussed in the paragraphs below concerning the respondents' alternative allocation methodologies, the respondents have failed to demonstrate that their unverifiable alternative methodologies are a more reliable source of reasonable fruit cost allocations than their verified books and audited financial records.

Based on the foregoing, we have adjusted Malee's, SAICO's, and TIPCO's submitted fruit costs to reflect the allocations as calculated and verified under each company's normal accounting system. Their normal allocation methodologies are consistent with Thai GAAP and appear to reasonably allocate fruit costs to CPF. Furthermore, the respondents have provided insufficient, if any, evidence to the contrary. In addition, as discussed below, the respondents have failed to demonstrate that their unverifiable alternative methodologies are a more reliable source of reasonable fruit cost

allocations than their verified books and audited financial records.

Notwithstanding the Department's conclusion that the respondents' normal fruit cost allocation methodologies are in accordance with Thai GAAP and the Department's rejection of the respondents' arguments concerning the managerial goals of their normal allocation methodologies, the Department determines that in light of the practices followed by the other three respondents in this investigation, Dole's normal allocation methodology results in an unreasonable allocation of fruit costs to CPF. Due to the proprietary nature of the facts at issue, our entire analysis of Dole's normal allocation methodology is contained in the proprietary version of our concurrence memorandum dated May 26, 1995.

Thus, we have determined that because Dole's allocation does not "reasonably reflect" the cost of producing the merchandise, we cannot employ that allocation in our COP analysis. Given that Dole's normal methodology results in an unreasonable allocation of fruit costs to CPF, the Department must determine what would constitute a reasonable allocation of fruit costs. A reasonable fruit cost allocation methodology would be one which reflects the significantly different quality of the fruit parts which are used in the production of CPF versus those which are used in the production of juice products. One approach to deriving such an allocation methodology would be to compare the net realizable value of the CPF versus juice products over a period of years. Net realizable value (NRV) is commonly defined as the predicted selling price in the ordinary course of business less reasonably predictable costs of completion and disposal. See *Cost Accounting* at 534. Ideally, such a NRV methodology would compare historical cost and sales data for pineapple fruit products over a period encompassing several years prior to the antidumping proceeding and also would include data for markets where allegations of dumping have not been lodged.

While it would have been preferable to develop an allocation methodology based on historical NRV data in order to reasonably allocate Dole's fruit costs to CPF, we were unable to do so in this investigation because the data were not available and we did not present Dole with an alternative methodology for allocating fruit costs. However, we intend to do so in any future administrative reviews if an order is issued. Cf. *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7026

(February 6, 1995) (Department determined that it would have been preferable to disaggregate rose costs but the data were not available and the Department did not present respondents with an alternative methodology). Such a methodology would enable us to reasonably allocate Dole's fruit costs to CPF, but would not require them to change their method of recordkeeping.

Given the fact that the record in this investigation does not contain the data necessary to develop an allocation methodology for Dole based on its historical NRV data, for our final determination, we have allocated Dole's pineapple fruit costs based upon an average of the proprietary fruit cost allocation percentages used by Malee, SAICO, and TIPCO in their normal accounting systems.

As discussed above, the Department's practice is to rely on a respondent's books and records prepared in accordance with its home country GAAP unless those accounting principles do not reasonably reflect costs associated with production of the subject merchandise. Although we have relied on Malee's, SAICO's and TIPCO's normal fruit cost allocation methodologies and have based Dole's fruit costs upon the other three respondents' normal fruit cost allocation methodologies, we also will address the respondents' alternative, weight-based allocation methodologies.

Each of the respondents have argued that a weight-based methodology is appropriate in the context of this investigation because it is based on a non-distortive, neutral, physical criterion, i.e., weight. We believe, however, that allocating the cost of pineapple evenly over the weight is not supportable. Using weight alone as the allocation criteria sets up the illogical supposition that a load of shells, cores, and ends cost just as much as an equal weight of trimmed and cored pineapple cylinders. Significantly, the use of physical weighting for allocation of joint costs, i.e., in this case the cost of the pineapple fruit, may have no relationship to the revenue-producing power of the individual products. Thus, for example, if the joint cost of a hog were assigned to its various products on the basis of weight, center-cut pork chops would have the same unit cost as pigs' feet, lard, bacon, ham, and so forth. Fabulous profits would be shown for some cuts, although losses consistently would be shown for other cuts. See *Cost Accounting: A Managerial Emphasis* at 533.

Much like the hog in the previous example, the pineapple is comprised of various parts, i.e., the cylinder, core,

shells, etc., with significantly different uses and values. Because the parts of the pineapple are not interchangeable when it comes to CPF versus juice production, it would be unreasonable to value all parts equally by using a weight-based allocation methodology.

We also note that authoritative accounting literature provides examples of cost allocations in the canning industry dependent on two factors, a quantitative factor and a qualitative factor. See *Management Accountants' Handbook* (Keller 4th ed.) at 11:13, citing "Cost and Sales Control in the Canning Industry", N.A.C.A. Bulletin, Vol. 36 (November 1954) at 376. The output of finished products can be captured in the quantitative measure, which is used to allocate the direct preparation labor costs and other costs directly related to the quantity of raw fruit processed. The difference in the relative quality of the fruit used in each product is reflected in a qualitative factor, which is used to allocate the purchase cost of raw materials among products. The various grades or parts of the fruit are assigned a factor reflective of the quality of the fruit used for each product. With all of this in mind, we believe it is inappropriate to allocate fresh pineapple fruit costs to the various pineapple products solely on the basis of weight.

The respondents have also argued that value considerations are inappropriate because the purchased pineapples have a uniform value throughout and, therefore, the cost of pineapple properly should be allocated based on consumed weight. Based on verification testing and our review of the record in this case, however, we believe that CPF producers strive first to maximize production of the more valuable canned fruit products and second, to maximize revenue from the remaining raw material through the production of juice and concentrate. As such, the respondents place a higher value on the raw material which may be used in the production of subject merchandise. As evidence of this, we noted that the respondents pay a lower price to pineapple suppliers that deliver small fruit. Though two shipments may contain in total the same weight of fresh pineapple, a vendor that delivers smaller fruit will be paid less than one that delivers fruit of a larger size. This is because the smaller pineapples will yield a smaller cylinder of quality pineapple fruit which can be used in CPF production.

Accordingly, we reject respondents' claim that, although it is true that during the POI the sales value of canned pineapples was higher on a per-

kilogram basis than that of juice or concentrate, that does not mean that the pineapples used to make the canned pineapples were more expensive than those used to make the juice or concentrate. We do acknowledge that the purchased quantities of small fruit used exclusively in juice production were not significant during the POI, but the existence of a "penalty" for small fruit indicates a lower value for such items.

As discussed above, the respondents have also claimed that a value-based allocation methodology is legally impermissible pursuant to *IPSCO*. Contrary to the respondents' arguments, however, *IPSCO* is not controlling in this case. Nor does *IPSCO* stand for the proposition that in every instance value-based allocations are legally impermissible.

*IPSCO* involved the Department's use of an appropriate methodology for allocating costs between two grades of steel pipe. There were no physical differences between the two grades of pipe, only differences in quality and market value. *IPSCO*, 965 F.2d at 1058. Furthermore, the same materials, labor, and overhead went into the manufacturing lot that yielded both grades of pipe. *Id.* Given these facts, the Department, in its final determination, allocated production costs equally between the two grades of pipe. The Department reasoned that because they were produced simultaneously, the two grades of pipe in fact had identical production costs. *Id.* The CIT rejected the Department's allocation methodology, reasoning that it did not account for differences in value between the two grades of pipe. On appeal, the Court of Appeals for the Federal Circuit held that the CIT erred by substituting its own construction of a statutory provision for the reasonable interpretation made by the Department, *i.e.*, identical production costs. *Id.* at 1061.

While the Court of Appeals noted that the CIT's instructions to allocate costs based on relative value in *IPSCO* resulted in an unreasonable circular methodology (*i.e.*, because the value of the pipe became a factor in determining cost which became the basis for measuring the fairness of the selling price of pipe), nowhere did the appellate court indicate that use of an allocation methodology based on relative value was legally impermissible. On the contrary, *IPSCO* suggests that the courts will defer to the Department's preference for reliance on respondents' normal allocation methodologies, particularly where there are significant differences in the raw

materials, *i.e.*, the use of the cylinder in production of CPF and the use of the shells, cores, and ends, in production of juice and concentrate, as well as differences in processing, labor and overhead. Our reasoning here is consistent with *IPSCO* as well as the applicable legislative history. As a result, respondents' reliance on *IPSCO* is misplaced. We also find the respondents' references to the inappropriateness of value-based allocations in a rate-regulated environment to be irrelevant because there is no evidence on the record to suggest that either the subject merchandise or the juice products are sold in a rate-regulated environment.

We have also considered the respondents' comments regarding potentially undesirable consequences of a value-based allocation and find that such scenarios are unlikely to actually take place. However, as with any allocation methodology chosen by the Department, there exists the potential for respondents to manipulate the allocations in opposition to the Department's intent. The respondents' argument that it will be possible to reduce the dumping margin by reducing their prices of subject merchandise in the United States and increasing their prices of non-subject merchandise is misleading. Because it would be most reasonable to base measures of net realizable value upon long term historical data, it is unclear how respondents could use this information to restructure their past results. However, the Department would, of course, continue to review this information closely through the administrative review process. Thus, we believe that this scenario is unlikely as such action would likely result in lower profits on subject merchandise sales (possibly raising the dumping margin) and reduced market share for non-subject merchandise. We also believe it would be inappropriate for the Department to choose a particular course of action based on an argument that in its essence states, if the Department picks a particular methodology we, the respondents, will take advantage of loopholes in that methodology.

Finally, we disagree with the respondents' claim that petitioners' use of a weight-based allocation for fruit cost establishes that method as industry standard practice. The fact that the petitioners use weight as a basis for income tax purposes is not persuasive. We also note the dichotomy in respondents' reasoning that their own tax (and book) methodology must be rejected, while arguing that petitioners

tax accounting records should be controlling. We also note that the respondents did not provide any examples of companies that use weight-based fruit cost allocations as the basis for financial or managerial reporting.

#### *Comment 7*

Each respondent claims that its normal accounting method of allocating certain costs incurred prior to the split-off point of the CPF and juice production lines results in distortive and inappropriate cost of production figures.

The petitioners argue that the Department should rely on the respondent companies' normal accounting for these costs.

#### *DOC Position*

Because of the proprietary nature of this item, we have addressed the parties' comments and analyzed the issue in detail in our proprietary concurrence memorandum. For TIPCO, SAICO, and Malee, our determination was to allocate the costs following the companies' normal methodology for allocating pineapple fruit costs. For Dole, we allocated the costs using the average of the other three respondents' normal fruit cost allocation percentages, consistent with our determination in Comment 6 above.

#### *Company Specific Issues*

##### *Dole*

#### *Comment 8*

The petitioners argue that the methodology used by the Department in its preliminary determination to calculate a dumping margin for Dole based on an estimated quantity of its U.S. sales of Thai-origin merchandise is biased. Specifically, the petitioners contend that this methodology fails to take into account the fact that prices vary within UPC categories because Dole's Philippine-sourced merchandise is sold at a lower price than its Thai-sourced merchandise. In order to apply a methodology that is less distortive and more accurate, the petitioners assert that the Department should calculate one overall Thai-to-Philippine shipment ratio and apply this ratio to the total amount of potential uncollectible dumping duties (PUDD) calculated for all UPC codes.

Dole asserts that no possible distortion could arise from the methodology used by the Department in its preliminary determination. Although prices vary within a given UPC code, Dole argues that there is no correlation between the sales price and the country of origin because the selling price is

based on contract prices and standard price lists that do not distinguish between Philippine- and Thai-sourced merchandise. Therefore, Dole asserts that any possible dumping attributable to imports from Thailand is directly related to the volume of imports sourced from Thailand.

#### *DOC Position*

We agree with Dole, in part. At verification we confirmed that Dole sells both its Thai- and Philippine-origin merchandise at the same price in the United States. Therefore, the petitioners' assertion that Dole's Philippine-sourced sales were sold at prices lower than its Thai-sourced sales is unfounded. In addition, contrary to the petitioners' assertion, the application of a single shipment ratio to the total PUDD for all sales would be distortive because this approach assumes that the shipment ratio between Thai- and Philippine-sourced merchandise is constant across all UPCs. This is not true. The shipment data confirmed at verification shows that the ratio of Thai- to Philippine-sourced merchandise varied immensely between UPCs. The petitioners' approach blurs the vast differences between these UPC shipment ratios.

In order to calculate a less than fair value margin based on an estimated quantity of Dole's U.S. sales of Thai-origin merchandise during the POI, we have continued to weight average the dumping margin for each UPC product category by the ratio of shipments of subject merchandise from Thailand to the total volume shipped from both Thailand and the Philippines during the last seven accounting periods of 1993. In calculating the ratios, we excluded all negative shipment quantities reported by Dole because these quantities do not represent actual shipments during the second half of 1993. Instead, these quantities reflect the reclassification of merchandise from one UPC category to another.

#### *Comment 9*

Dole argues that the Department's preliminary margin is grossly distorted due to the inclusion of a single, aberrant third country sale. Dole asserts that this sale is outside the ordinary course of trade and should be excluded from the Department's calculation of FMV for the following reasons: (1) The sale was of a product type sold only once in the third country market during the POI; (2) the sale constituted a negligible portion of the third country database; (3) the sale was not to a regular customer; (4) the terms of sale were uncommon for the third country market; and (5) the selling price was abnormally high when

compared to the average selling price for other products of the same can size during the POI.

In addition Dole argues that if it were subject to an antidumping order, it would not need to raise its U.S. prices or lower its German prices to avoid the imposition of dumping duties. Therefore Dole asserts that no purpose would be served by an antidumping duty order if it were to be based on this sale. In support of its position Dole cites *Melamine Chemicals, Inc. v. United States*, 732 F.2d 924 (Fed. Cir. 1984) (*Melamine Chemicals*), where the Court of Appeals emphasized that the purpose of the antidumping law is "to discourage the practice of selling in the United States at LTFV \* \* \*. That purpose would be ill-served by application of a mechanical formula to find LTFV sales where none existed."

The petitioners argue that this sale is not outside of the ordinary course of trade and should be included in the calculation of FMV. The petitioners contend that the terms of sale were not unusual because the same sales terms were offered on numerous third country sales during the POI. In addition, the petitioners assert that the customer was regular because Dole made several sales to this same customer during the POI. Finally, the petitioners contend that Dole's assertion that the selling price for this sale was abnormally high is misleading because sales made at prices below the COP were included in Dole's calculation of the average selling price for this can size. The petitioners argue that the fact that this sale was sold at a higher price than sales sold at prices below the COP does not provide evidence that the price is aberrational.

#### *DOC Position*

We agree with Dole that the sale was outside the ordinary course of trade as defined in section 771(15) of the Act and have excluded it from the calculation of FMV. We agree with the petitioners that the customer and terms of sale associated with this sale were not unique. Further, Dole's reliance on *Melamine Chemicals* is misplaced. *Melamine Chemicals* involved the issue of whether the Department's issuance and application of a regulation concerning exchange rate fluctuations during a less than fair value investigation was lawful. Notably, the sentence immediately following the ones quoted by Dole states, "A finding of LTFV sales based on a margin resulting solely from a factor beyond the control of the exporter would be unreal, unreasonable, and unfair." *Melamine Chemical*, 732 F. 2d at 933 (emphasis in original). However, after reviewing all

aspects of the sale, we have determined that this sale was outside of the ordinary course of trade and have excluded it from the calculation of FMV.

In determining whether a sale is outside the ordinary course of trade, the Department does not rely on one factor taken in isolation, but rather considers all of the circumstances particular to the sale in question. See *Murata Mfg. Co. v. United States*, 820 F. Supp. 603, 606 (CIT 1993). Furthermore, our analysis of these factors is guided by the purpose of the ordinary course of trade provision, namely to prevent dumping margins from being based on sales which are not representative of home market or third country sales. See *Monsanto Co. v. United States*, 698 F. Supp. 275, 278 (CIT 1988). After reviewing all aspects of this sale, we found the following facts, taken as a whole, determinative: (1) Dole's single third country sale of this product constituted an insignificant portion of its total German sales volume; (2) the sale was of a product that was sold only once during the POI; (3) the sales quantity was significantly lower than the average sales quantity for the POI; (4) the sales price was significantly higher than the average sales price charged on other CPF products sold in the same can size during the POI; (5) the profit margin realized by Dole on this particular sale was substantially higher than the weighted-average profit earned on other sales of CPF in this can size during the POI; and (6) there was only one customer for this product in the third country market during the POI. See generally *Cemex, S.A. v. United States*, Slip Op. 95-72 at 6-14 (CIT April 24, 1995) (factors considered included lack of market demand, volume of sales, sales patterns, shipping arrangements, and relative profitability between models), and *Mantex, Inc. v. United States*, 841 F. Supp. 1290, 1305-09 (CIT 1993) (factors considered included volume and frequency of sales, demand, product use, and relative profitability). The facts provide the basis for our finding that this one sale was outside the ordinary course of trade.

#### Comment 10

Dole argues that the Department's uneven treatment of pre-sale movement and import duty expenses associated with third country and ESP transactions in the preliminary determination was unfair and at odds with the Department's policy of making "mirror-image adjustments to FMV and ESP so that they can be fairly compared at the same point in the chain of commerce." See *Koyo Seiko Co. v. United States*, 36 F. 3d 1565, 1573 (Fed. Cir. 1994) (*Koyo Seiko*). Dole notes that the antidumping

statute provides for such mirror-image adjustments through the circumstance of sale (COS) adjustment.

Dole argues that the Court of Appeals holding in *Koyo Seiko* regarding the COS and ESP offset provisions was not limited by its 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*). Dole asserts that the *Ad Hoc Committee* decision addressed the issue of pre-sale movement expenses incurred in connection with home-market sales, and only with regard to FMV where U.S. price is based on purchase price sales. Dole claims that it could not have been the intent of Congress for significant costs such as those incurred for ocean freight and import duties to be ignored when third country sales are used to calculate FMV.

Dole argues that all import duty and movement expenses incurred on its third country sales should be deducted under the COS provision as direct expenses for the following reasons: (1) In accordance with 19 CFR 353.56(a)(1), there is a *bona fide* difference in the COS between U.S. and third country sales made on an ex-warehouse basis; (2) movement and import duty expenses are directly related to the third country terms of sale because the terms call for delivery from Dole's European warehouse; (3) transportation costs are variable, not fixed, and as such are directly related to sales; (4) pre-sale warehousing expenses are directly related to sales because it is necessary to hold the inventory in forward warehouses in order to ensure that the merchandise is available within the delivery times required under the terms of the sales agreement; and (5) *Import Policy Bulletin 94.6* states that movement expenses are a direct cost of making the sale, and are always deducted from the price.

The petitioners argue that the Department properly classified the import duty and movement expenses associated with Dole's third country sales made on an ex-warehouse or delivered basis as indirect selling expenses. The petitioners assert that the costs incurred by Dole for duty and movement expenses would have been incurred whether or not any individual sale had ever taken place and, therefore, cannot be directly associated with individual sales.

#### DOC Position

In *The Ad Hoc Committee*, the Court held that the Department could not deduct home market pre-sale movement charges from FMV based on its inherent authority to apply reasonable

interpretations in areas where the antidumping law is silent. Instead we will adjust for these expenses under the COS provision of the Department's regulations (19 CFR 353.56). Pursuant to the COS provision, the Department will make an 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 linked in most instances to pre-sale warehousing expenses. See, e.g., *Ad Hoc Committee of AZ-NM-TX-FL Producers v. United States*, Slip Op. 95-91 at 3-9 (CIT May 15, 1995).

Typically the Department treats expenses associated with inventory that is held for purposes of production planning and being able to ship the merchandise quickly with a regular turnover as indirect selling expenses because this inventory is maintained by the company as a service to all customers. See, e.g., *Carbon Steel Wire Rod from Trinidad and Tobago*, 46 FR 43206 (September 22, 1983). In limited circumstances, however, the Department does recognize certain pre-sale expenses as direct. For freight and warehouse expenses, those circumstances usually involve products channeled or customized for certain buyers. See, e.g., *Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy*, 59 FR 66921, 66928 (December 28, 1994) (allowing COS adjustment where pre-sale warehousing expenses incurred for designated amount of subject merchandise with certain specifications for particular customers); *Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Japan*, 56 FR 16300, 16303 (April 22, 1991) (allowing COS adjustment for pre-sale warehousing expenses found to be directly related to sales on the basis that expenses were incurred and reported for specific products sold to specific customers); and *Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker and Flux from France*, 59 FR 14136 (March 25, 1994) (respondent demonstrated that specific products were held in a warehouse for specific customers and that the stock in question was only available for sale to those specific customers).

In the instant proceeding, Dole reported two types of third country warehousing expenses: (1) Those

associated with moving the merchandise "in and out" of the warehouse; and (2) warehouse storage charges. Based upon our review of the evidence on the record, we are not satisfied that Dole has provided evidence to substantiate its claim that either pre-sale warehousing expense is directly linked to the sales under investigation. These pre-sale expenses do not appear to be direct expenses for the following reasons: (1) The amount of time that passes between the date the merchandise arrives at the European warehouse and the date it is shipped to the third country customer; (2) in most instances the third country sales were made from inventory, as demonstrated by the fact that the date of sale and the date of shipment are the same, *i.e.*, the fact that the merchandise was sold from inventory demonstrates that the warehousing was pre-sale; (3) the merchandise held in the European warehouses is not pre-designated for sale to a specific customer; (4) the merchandise sold from inventory was not specialty merchandise, but instead commercial products sold in the normal course of trade in Germany; (5) the merchandise that was held in inventory was sold to numerous third country customers during the POI; (6) Dole incurs the cost of pre-sale warehousing expenses, not the customer, *i.e.*, these expenses are not post-sale warehousing expenses because if they were post-sale, the customer would have to incur the cost of the post-sale warehousing; and (7) in its questionnaire response Dole did not claim the warehouse storage charges as direct selling expenses; rather, Dole characterized warehouse storage costs as indirect expenses.

As noted above, pre-sale movement charges incurred in positioning the merchandise at the warehouse generally are linked to pre-sale warehousing expenses. Therefore, because we have found Dole's third country pre-sale warehouse expenses to be indirect, the expenses involved in moving the merchandise to the warehouse also must be indirect. We do not have the option of treating comparable expenses on U.S. sales as indirect in nature because such sales are ESP sales, and section 772(d)(2)(A) of the Act clearly requires the deduction of such expenses in arriving at USP.

#### *Comment 11*

Dole argues that in the event the Department concludes that the third country pre-sale movement and import duty expenses are indirect selling expenses, the Department must similarly characterize identical U.S. movement and import duty expenses as

indirect expenses. Dole asserts that 19 CFR 353.56(b)(2) defines the pool of U.S. expenses used to calculate the "ESP cap" in the same terms it uses to define the pool of third country expenses subject to the cap. Therefore, Dole contends that the Department is unjustified in categorizing pre-sale movement expenses as "directly related" to U.S. sales while finding the same group of expenses to be indirectly related to third country sales.

The petitioners assert that under 19 CFR 353.41(d)(2)(i), "any cost and expenses, and United States import duties incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States" must be subtracted from USP. Therefore, the petitioners argue that under the law, U.S. movement and duty expenses cannot be classified as selling expenses, but instead must be subtracted directly from USP.

#### *DOC Position*

We agree with the petitioners. Pursuant to section 772(d)(2)(A) of the Act, to treat these expenses as indirect expenses would be clearly contrary to the antidumping law.

#### *Comment 12*

Dole contends that the Department made the following clerical errors in its preliminary determination: (1) The Department improperly classified import duty and movement expenses associated with two third country sales made prior to importation as pre-sale rather than post-sale expenses; (2) the Department incorrectly classified freight expenses associated with moving the merchandise between Dole's European warehouse and the German customer as pre-sale rather than post-sale expenses; and (3) the Department inadvertently deducted the swells allowance from USP as both a discount and a warranty expense.

The petitioners agree that post-sale expenses associated with the third country sales should be treated as direct expenses.

#### *DOC Position*

We agree with Dole, in part. We have corrected the errors noted in points one and two above for the final determination. Regarding point three, we disagree with Dole's assertion that the swells allowance was deducted twice from USP. We have examined both the computer program and Dole's U.S. database and have concluded that the swells allowance was not deducted as a discount in our preliminary determination. Therefore, this expense

was properly deducted from USP just once as a warranty expense in our preliminary determination.

#### *Comment 13*

The petitioners argue that the Department should adjust Dole's submitted fruit costs for pineapple obtained from the company's own plantations. The petitioners assert that the Department should use the costs which were actually incurred during the POI instead of Dole's submitted amount, which represents an allocation of the annual plantation costs. According to the petitioners, Dole's methodology is contrary to the Department's questionnaire requirements and practice. In support of their position, the petitioners refer to the *Final Determination of Stainless Steel Bar from Spain*, 59 FR 69931, 66938 (December 28, 1994), where the Department stated:

The Section D questionnaire clearly requests weighted average production data based on costs incurred during the POI. We have departed from this general policy only when unique circumstances arise, such as when production did not occur during the period of investigation \* \* \* (A)bsent strong evidence to the contrary, the Department assumes that the cost structure during the POI is representative and can be used to calculate the cost of production.

Dole argues that the Department should accept its submitted calculation of fruit costs, as it is appropriate to take account of the growing cycle which occurs at its plantations. According to Dole, the majority of its self-grown pineapple was harvested in the second half of 1994, yet more than half of its annual operating costs were incurred in the first half of the year, during the POI. Dole argues that the use of actual costs incurred during the POI would be distortive, in relation to the quantity of pineapples harvested in that period, while the company's submitted fruit costs reflect a proper matching of expenses and production.

#### *DOC Position*

We agree with Dole. The evidence on the record demonstrates the disproportionate relationship that exists between expenses incurred and pineapples harvested under the accounting methods practiced by Dole's plantations. Dole has presented evidence which has led to our determination that unique circumstances exist in this case, with regard to Dole's self-grown pineapples, and it is clear that the cost structure during the POI is not representative. As noted by Dole, its annual accrual system for plantation costs effectively ensures

an approximate relation between the costs incurred and the volume of fruit harvested during the same period. The company's submitted methodology, which presents a similar allocation, does not appear to be unreasonable, given the fluctuation in Dole's growing cycle. We therefore accepted Dole's submitted fruit costs, including the allocation of plantation fruit costs based upon the POI pineapple harvest.

*Comment 14*

The petitioners claim that Dole improperly excluded pineapple purchases made on the last day of the POI from its fruit cost calculation. The petitioners argue that this fruit was used in POI production and, therefore, the Department should include this amount in the calculation of Dole's COP and CV.

Dole did not object to the petitioners' comments.

*DOC Position*

We agree with the petitioners. COP and CV should be calculated using the actual costs incurred during the POI and the excluded pineapple purchases were used in POI production. As a result, we increased Dole's fruit costs by the amount of the excluded pineapple purchases.

*Comment 15*

In its submission, Dole allocated fixed overhead and certain variable overhead costs to its products in the same manner as in its normal accounting system. The petitioners argue that the Department should reallocate these overhead costs on the basis of net realizable value. The petitioners argue that Dole is unable to track its variable overhead costs on a product line basis and suggest that the normal allocation methodology does not use an appropriate activity base. The petitioners also state that the Department should exclude an offset to overhead costs which they claim was improperly applied.

Dole disagrees with the petitioners' assertions and states that the submitted allocation methodology is consistent with its normal accounting for these overhead costs and should be accepted by the Department. Dole did not comment on the overhead offset.

*DOC Position*

We agree with Dole, in part. The methodology used to allocate these overhead costs is, in fact, used by Dole in its normal course of business. In addition, the activity bases in this methodology are commonly used for overhead allocations and present a reasonable method of allocating these expenses. However, we agree with the

petitioners that the overhead offset was directly related to a non-subject product line and should not be allocated over all products. We therefore accepted the allocation methodology used by Dole, but adjusted the submitted overhead costs to exclude the submitted overhead offset.

*Comment 16*

The petitioners note that the Department calculated a standard case quantity for tropical fruit products that was less than Dole's submitted quantity. Since standard cases were used by Dole as an activity base for allocating sugar and acid costs, the petitioners assert that the Department should correct the quantity of standard cases submitted by Dole. Also, the petitioners assert that the standard case quantity submitted for concentrate was calculated using unverified estimates and should not be relied upon.

Dole did not comment on this issue.

*DOC Position*

We agree with the petitioners, in part. The number of standard cases was reviewed for all products by the Department, using Dole's normal conversion factors, and only the amount of tropical fruit cases was found to be incorrect. We therefore adjusted the number of standard cases used in the allocation of sugar and acid costs to reflect the quantity calculated by the Department. We also noted that this error affects the allocation of fixed overhead, and adjusted the allocation accordingly.

*Comment 17*

The petitioners assert that the Department should revise Dole's other materials costs to reflect the packing medium actually used by the company in each of its CPF products. The petitioners argue that, for purposes of computing COP and CV, Dole incorrectly allocated sugar and citric acid costs over all CPF products, including juice-packed products which do not contain sugar.

Dole disagrees with the petitioners and submits that the cost difference for products packed in juice and products packed in syrup is minimal and should not be recognized in the COP and CV calculations. Dole also argues that the packing medium does not affect the pricing of its products and refers to petitioners' own comments from the petition: "The difference in costs of manufacturing between the various forms and two varieties (juice packed and syrup packed) are sufficiently marginal to allow for equal pricing; consumer preferences are not

sufficiently pronounced as to support price differentials." Based upon this, Dole argues that sugar and citric acid unit costs were properly submitted for all products, regardless of the actual packing medium used.

*DOC Position*

We agree with the petitioners that Dole should have reported packing medium costs for each specific product. It is clear from a review of the record that the syrup packing medium costs more to produce than the juice packing medium. We have reflected this cost difference in our revised COP and CV figures for Dole.

*Comment 18*

Dole claims that the Department should revise the company's submitted G&A factor to reflect the use of 1994 financial data, provided at verification.

The petitioners did not comment on this issue.

*DOC Position*

We disagree with Dole. Dole's submitted G&A factor was computed based on 1993 financial data for Dole Thailand, Ltd. (DTL), and included an allocation of G&A expenses incurred by Dole Food Company, Inc. (DFC) and Dole Packaged Foods Company (DPF). At verification, Dole provided a revised G&A factor, which was computed based on full-year 1994 financial data. To support its revised calculation, Dole provided the Department with audited financial statements for DFC and unaudited financial statements for DTL. DPF does not prepare audited financial statements.

The Department normally computes the G&A expense factor based on the respondent's audited financial statements for the full-year period that most closely corresponds to the POI. *See, e.g., Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong*, 55 FR 30733 (July 27, 1990) (Comment 18). Audited financial statement information provides us with some degree of assurance that an independent party has reviewed the respondent's accounting data and expressed an opinion as to its fairness in reflecting the results of that company's operations. Therefore, because Dole did not provide 1994 audited financial statements for DTL, we calculated the G&A factor using the respondent's audited 1993 financial statements, which we believe are a reasonable surrogate for Dole's 1994 operations. *See also* Comment 35 below.

*Comment 19*

The petitioners argue that Dole improperly applied waste revenues and sugar refunds as offsets to G&A expenses. The petitioners claim that waste revenues should be applied to fruit costs, reflecting Dole's normal accounting system, in the same ratio that the Department determines fruit costs should be allocated (see Comment 6 above). Sugar refunds, according to the petitioners, should be applied to materials costs, since sugar is a raw material. In addition, the petitioners argue that sugar refunds should be applied only to those products to which sugar and citric acid costs were allocated.

Dole did not comment on this issue.

*DOC Position*

We agree with the petitioners. It would be more appropriate to apply waste revenues to fruit costs, reflecting Dole's normal accounting system. It would also be more appropriate to apply sugar refunds to other materials costs, since sugar is a raw material. We therefore adjusted fruit costs, other materials costs, and G&A costs to reflect the reclassification of waste revenues and sugar refunds.

*Comment 20*

Dole argues that the Department should use the amount of sugar refunds earned as an offset in its calculation of the G&A factor, rather than the amount of sugar refunds received.

*DOC Position*

We disagree with Dole. We noted that Dole, in its normal accounting system, does not record these refunds as earned until payment is received. Since the amount of the refund is uncertain until payment is received, this appears to be a reasonable treatment and, therefore, we have not adjusted the sugar refund offset amounts.

*TIPCO**Comment 21*

The petitioners argue that certain price adjustments reported as a warranty claim should be reclassified as a rebate in the final determination.

TIPCO argues that the reclassification of the claim is unnecessary given its insignificant value. However, TIPCO asserts that the Department can incorporate the claim as either a rebate or a warranty claim.

*DOC Position*

We agree with the petitioners, in part. We agree that this price adjustment was improperly reported as a warranty

claim. It is the Department's practice to allow only those expenses related to quality-based complaints to be classified as a warranty expense. See, e.g., *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661 (February 25, 1991). In this instance, the records do not indicate that the price adjustments were associated with quality based complaints.

We disagree with the petitioners, however, that the price adjustment should be treated as a rebate. A rebate is a refund of monies paid, a credit against monies due on future purchases, or the conveyance of some other item of value by the seller to the buyer after the buyer has paid for the merchandise. In this instance, the price adjustment was accounted for by reducing the selling price to the customer. Accordingly, we are treating these expenses as discounts.

*Comment 22*

TIPCO argues that the Department should compute G&A expenses for the final determination using the company's submitted 1994 G&A ratio calculation for the six months of the POI. TIPCO claims that the Department should not compute a G&A ratio based on 1993 financial data and apply that ratio to 1994 CPF manufacturing costs because the company's change in its accounting for factory administrative costs would make such a calculation nonsensical. Further, TIPCO maintains that application of a 1993 G&A ratio to 1994 costs would double count factory administrative costs since these costs would be included in both the numerator and the denominator of the G&A ratio calculation. Lastly, TIPCO argues that if the Department determines the company's 1994 G&A ratio is unacceptable because it is based on a six-month period, then the Department should compute G&A expenses based on the unaudited financial statement data for the full-year 1994 provided by TIPCO at verification.

The petitioners assert that, in keeping with its normal practice, the Department should use TIPCO's full-year 1993 audited financial statements to compute the company's G&A expense ratio for the final determination.

*DOC Position*

We have followed our normal practice for calculating G&A expenses by using TIPCO's 1993 full-year, audited financial statements. See also Comment 35 below. However, to correct for any possible distortion between 1993 and 1994 costs due to TIPCO's change in accounting classifications, we have adjusted the company's 1993 G&A and

cost of sales figures for an annualized estimate of factory administrative costs based on amounts incurred during the POI. This adjustment would represent our estimate of 1993 factory administrative costs since the actual 1993 cost figure is not available from the case record.

We also adjusted TIPCO's net interest expense calculation to take into account the change to 1993 cost of sales that occurred due to the reclassification of factory administration costs in 1994.

*Comment 23*

TIPCO states that the Department should accept the company's reported can weights for purposes of allocating certain can production department costs. TIPCO argues that difference between the can weights used by TIPCO in the submission and the POI can weights obtained at verification are insignificant. According to TIPCO, any increases to weights associated with certain can sizes will only be offset with decreases to weights for other can sizes.

The petitioners state that the Department should adjust the costs of cans to incorporate the current weights obtained from the production department at verification

*DOC Position*

We did not adjust for the differences in can weights since they had an immaterial affect on the cost of CPF sold during the POI. In its COP/CV submission, TIPCO used the standard weight of cans to allocate the can production departments direct labor and overhead costs. At verification, we noted that the can weights used to allocate labor and overhead costs were outdated. Therefore, we obtained can weights specific to the POI. Although we raised this as an issue in our verification report, after reviewing the POI can weight data obtained at verification, we note that the difference in the reported weights has only a slight effect on CPF costs since can production labor and overhead during the POI were insignificant.

*Comment 24*

TIPCO states that it properly classified seasonal labor costs as direct, not indirect, labor. The only labor classified as indirect was the labor expense associated with salary of administrative personnel who were employed throughout the year in a supervisory or administrative capacity.

The petitioners have no comments on this issue.

*DOC Position*

We agree with the respondent and have accepted their classification of seasonal labor as direct labor for the final determination. During verification, we traced the payroll records of several seasonal production employees from source documentation to a specific fabrication cost item reported in TIPCO's income statement. We then reconciled this fabrication cost item to the amount reported in the COP and CV submission. During this testing, we noted that TIPCO normally accounted for the cost of the seasonal employees as part of direct labor costs.

*Comment 25*

The petitioners state that, at verification, the Department discovered that TIPCO incorrectly allocated electricity to certain pieces of machinery (e.g., electric generators) based on horsepower production factors rather than horsepower consumption factors. According to the petitioners, the Department should correct TIPCO's reported variable overhead costs for this error.

TIPCO states that it has already made changes to account for the electricity allocation issue found at verification in a supplemental submission.

*DOC Position*

At verification, we found that TIPCO had overstated the amount of electricity allocated to certain overhead departments. A supplemental submission that corrects the misstatement was requested by the Department and received on February 28, 1995. We reviewed this submission and found the corrections to be appropriate. We have used this corrected data in reaching our final determination.

*Comment 26*

TIPCO states that the Department should accept its submission methodology of making a downward adjustment to the cost of manufacturing to account for certain revenues received in connection with the production of subject merchandise. If this approach is not accepted, TIPCO believes that the Department should make an upward adjustment to prices pursuant to section 773(a)(4)(B) of the Act.

The petitioners did not comment on this issue.

*DOC Position*

Because of the business proprietary nature of this item, we have addressed TIPCO's comment and analyzed the issue in detail in the proprietary concurrence memorandum. Our

determination was to allow the revenues in question as an offset to TIPCO's submitted COP and CV figures.

*Comment 27*

Both the respondent and the petitioners raise certain issues regarding the appropriateness of the methods used by TIPCO to compute the weight of its pineapple juice and solid fruit for purposes of allocating costs.

*DOC Position*

We believe that the issues surrounding the appropriateness of TIPCO's weight calculations are moot. For the final determination, TIPCO's fresh pineapple costs were allocated based on its normal accounting system and not on the company's proposed weight-based methodology. See Comment 6 above.

*SAICO**Comment 28*

SAICO argues that the Department should exclude certain U.S. sales of spoiled CPF from the calculation of any dumping margins, contending that these sales are aberrational and that claims for spoiled goods are extremely rare. SAICO cites the *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from Korea*, 57 FR 53693, 53782 (November 12, 1992) where defective corrosion-damaged pipe was excluded and the *Final Determination of Sales of Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 42942, 42949 (September 17, 1992) (*Welded SST Pipe*) in which aberrant and damaged sales were disregarded from the analysis. Additionally, SAICO argues, that the Department normally excludes cancelled or returned sales from its margin analysis. See *Welded SST Pipe*.

If the Department does not exclude the cancelled sales, SAICO argues that the expenses associated with the replacement shipments should be treated as indirect selling expenses because the circumstances of sale between the U.S. and German market do not differ. Treating the claim expenses as a circumstance of sale adjustment would distort the dumping margin. If the Department decides that the indirect selling expenses should apply only to the U.S. market, SAICO asserts that the allocation of the claim expense should still be made over all POI sales. To do otherwise would assume that prices of specific sales include a full allowance for aberrational and unforeseeable costs.

The petitioners contend that the Department should adjust for the actual costs incurred by SAICO for shipment of

the spoiled merchandise shipped to the U.S. customer. In their proprietary case brief, the petitioners provide a calculation of costs involved in this process based on all aspects of this transaction.

*DOC Position*

We agree with the petitioners that the sales of spoiled merchandise should not be treated as cancelled sales given that SAICO received payment in full for the merchandise. Instead, we are treating the expenses associated with the compensation for the spoiled sales as warranty expenses because they were associated with quality-based complaints. We allocated the total expenses SAICO incurred in connection with the spoiled sales over all sales made to the United States during the POI.

The expenses were not allocated over total worldwide sales because the data we have applies only to U.S. sales; we do not know whether SAICO made replacement shipments for spoiled merchandise to any other markets during the POI. Additionally, we do not believe it would be appropriate to allocate the expenses to the particular spoiled sales. SAICO does not have any warranty programs in place, and therefore its sales prices do not reflect an allowance for unforeseeable costs.

*Comment 29*

The petitioners interpret export bill discounts as sales-specific expenses that were necessitated by the credit terms that SAICO provided to certain customers. As such, the petitioners argue that these expenses were actual expenses SAICO incurred on certain sales and should be treated as direct selling expenses.

SAICO contends that because there is no adjustment to U.S. or foreign market selling price for actual interest expenses (but only imputed interest expenses), these expenses should not be deducted from U.S. price.

*DOC Position*

We agree with SAICO that these charges are included in imputed credit expense and therefore should not be deducted from U.S. price. Accordingly, we have not done so.

*Comment 30*

SAICO claims that, contrary to the assertions in the Department's verification report, the company produces syrup for CPF from a combination of water, sugar, and citric acid. It further maintains that pineapple juice is not an ingredient in its packing syrup but, instead, is used only for its

CPF products packed in their "natural juices." SAICO therefore asserts that the Department misstated in its cost verification report that the company improperly omitted the cost of pineapple juice for CPF products packed in heavy and light syrup.

The petitioners contend that the Department should revise SAICO's reported CPF costs to include the cost of pineapple juice used in heavy and light packing syrup. The petitioners believe that SAICO's cost of production for CPF should include the cost of all materials used to produce the merchandise, including pineapple juice used for packing syrup.

#### *DOC Position*

We have revised COP and CV to include an amount for the cost of pineapple juice used in SAICO's heavy and light packing syrups. During verification, we obtained documentation (verification exhibits 10 and 15) that led us to conclude that, despite SAICO's claims to the contrary, the company did in fact use pineapple juice as an ingredient in its heavy and light packing syrup.

#### *Comment 31*

SAICO argues that it could not rely on its normal accounting method for plantation pineapples for two reasons. First, it notes the fact that, at the time of its response preparation (as well as at the time of verification), the company's auditors had not made their year-end adjustment for pineapple costs. Thus, according to SAICO, essential data were missing for the company to compute the cost of plantation pineapples under its normal system. Second, SAICO maintains that, even if the year-end adjustment could have been made, the adjusting figure itself is an aggregate amount and cannot be divided into the materials, labor, and overhead cost elements that the company was required to report.

SAICO further argues that, in determining the proper cost-reporting period for the company's self-grown pineapples, the Department should select the period that captures to the extent practicable the costs incurred with respect to pineapples harvested during the POI. SAICO maintains that the pineapple costs computed on a 18-month period reasonably reflect such costs and that the Department should therefore rely on this methodology in its final determination.

The petitioners argue that SAICO's pineapple production costs should be based on the procedures used in the company's normal accounting system. Thus, the petitioners maintain that the

Department should revise SAICO's reported costs for self-grown pineapples to reflect the costs actually recorded by the company during the POI, including adjustments made by the company's auditors.

#### *DOC Position*

As part of our verification testing, we obtained and verified detailed information relating to SAICO's pineapple plantation costs. Contrary to SAICO's assertions in its case brief, this information showed monthly plantation costs, including capitalized preproduction costs, segregated by cost element. Moreover, the information is sufficient to compute a POI estimate of the year-end adjustment made by SAICO's auditors.

The lack of the year-end auditors adjustment and separable cost elements notwithstanding, SAICO has failed to offer any reason why its normal accounting method should not be used to compute the cost of its self-grown pineapples. Nor has the company provided the Department with information or analysis supporting its contention that such a methodology would be distortive for purposes of computing the cost of CPF during the POI. We have therefore used the plantation cost data obtained at verification to recompute the cost of SAICO's self-grown pineapples following the company's normal accounting method.

#### *Comment 32*

SAICO argues that certain plantation cost adjustments are reasonable and necessary in order to avoid distorting the cost of the company's self-grown pineapples harvested during the POI. First, SAICO believes that it properly excluded from total plantation costs all of the costs incurred at its three newest plantations—plantation numbers 7, 8, and 9. Second, SAICO states that it is more appropriate for the Department to allocate the company's plantation overhead costs based on the direct labor hours charged to each crop instead of on land area as reported in SAICO's original COP and CV submission.

The petitioners do not specifically address these adjustments in their case or rebuttal briefs. As a general comment, however, the petitioners do argue that the Department should base the cost of SAICO's self-grown pineapples on costs recorded under the company's normal plantation accounting system.

#### *DOC Position*

With respect to SAICO's exclusion of costs for plantations 7, 8, and 9, we believe in principle that this adjustment

is consistent with the company's normal method of deferring preproduction costs during the pineapple growing cycle. During verification, however, we found that plantation 7 had begun harvesting its pineapple crop during the POI. Consequently, in accordance with its normal method of accounting for self-produced pineapples, SAICO had begun recognizing as an expense the pineapple preproduction costs associated with the harvested plants. We have therefore revised SAICO's submitted fresh pineapple costs to account for the POI costs recorded by the company for plantation 7. In addition, we have excluded the preproduction costs incurred at plantations 8 and 9, in accordance with SAICO's normal accounting method.

For plantation overhead costs, we have accepted SAICO's labor-hour allocation method to charge a portion of total overhead costs to non-pineapple crops produced at the plantations. We found that SAICO did in fact normally charge all of its overhead costs to pineapples and none to the other crops produced at the company's plantations. We believe that this method unreasonably inflates the overhead costs associated with pineapple production since the overhead costs incurred generally relate to the overall operations of the plantations. Moreover, in this instance, given the labor-intensive nature of the plantation operations and the fact that the overhead costs correspond more closely with direct labor hours than land area, we believe that SAICO's proposed labor-hour allocation method represents an acceptable means of charging overhead costs to all plantation crops harvested during the POI.

#### *Comment 33*

SAICO argues that it is appropriate to include 1994 shutdown costs as part of the calculation of fixed overhead costs for the POI. According to SAICO, the 1994 shutdown costs are more closely associated with the POI than those incurred during the 1993 shutdown period.

The petitioners contend that SAICO's production costs should be based on the methods used by the company in its normal accounting system. According to the petitioners, SAICO shut down its processing plant during 1993 to prepare the facility for production operations during the subsequent months, that is, until the next shutdown in 1994. Thus, the petitioners maintain that the 1993 shutdown costs were incurred for and directly relate to production during the POI, and that the Department should therefore adjust SAICO's reported fixed

overhead costs to account for shutdown costs under the company's normal methodology.

#### *DOC Position*

We recalculated SAICO's fixed overhead costs for the POI based on the company's 1993 shutdown costs and following its normal accounting method. SAICO has historically amortized its annual plant shutdown costs on a prospective basis over the months following the shutdown period. Despite this fact, SAICO departed from its normal method and amortized shutdown costs retroactively for purposes of its COP and CV response. SAICO offered no explanation for this change in methodology other than to say that the 1994 shutdown costs were more "closely associated" with the POI. We found no justification for this claim. Further, we note the fact that SAICO's normal prospective accounting method was in accordance with Thai GAAP basis.

#### *Comment 34*

SAICO argues that the Department should not adjust the company's CPF costs for a certain POI transaction that the company's own outside auditors did not see fit to reflect in SAICO's 1994 interim financial statements.

The petitioners argue that this item should have been recorded as a loss in SAICO's accounting records and reflected in the company's reported COP and CV figures.

#### *DOC Position*

Because of the business proprietary nature of this item, we have addressed the parties' comments and analyzed the issue in detail in the proprietary concurrence memorandum. Our determination was to exclude the transaction from SAICO's reported COP and CV calculations.

#### *Comment 35*

SAICO argues that the Department should use the company's 1993 audited financial statement information to compute G&A and interest expense for the final determination. SAICO maintains that the 1994 financial data obtained by the Department at verification was unaudited and incomplete. Specifically, SAICO notes the fact that the 1994 data do not contain information necessary to compute the offsets for interest income, trade receivables, or finished goods inventory.

The petitioners contend that the Department should calculate SAICO's G&A and net interest expense factors based on the company's 1994 financial

data since this information encompasses the six months of the POI.

#### *DOC Position*

We have used the 1993 audited financial statements to compute G&A and interest expense factors. The Department normally computes G&A and interest expense factors based on SAICO's audited financial statement information for the full-year period that most closely corresponds to the POI. Audited financial statement information provides us with some degree of assurance that an independent party has reviewed SAICO's accounting data and expressed an opinion as to its fairness in reflecting the results of that company's operations. In addition, since companies often incur G&A and interest expenses sporadically throughout the fiscal year, we rely on the respondent's full-year audited data to ensure that our G&A and interest calculations capture the expenses incurred by the company over most, if not all, of its operating cycle. The full-year statements also make certain that we have considered any year-end adjusting entries made by respondent to its G&A and interest expenses. See, e.g., *Final Determinations of Sales at Less Than Fair Value: Certain Hot Rolled Carbon Steel Flat Products, Certain Cold Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut to Length Carbon Steel Plate from France*, 58 FR 37125, 37135 (July 9, 1993) (*Certain Carbon Steel Products from France*).

#### *Comment 36*

The petitioners state that, for the final determination, the Department should increase SAICO's reported cost of production to include the compensation paid by SAICO to its Board of Directors. The compensation paid to the Board of Directors was directly charged to retained earnings and was not recorded in the income statement.

SAICO did not comment on this issue.

#### *DOC Position*

For the final determination, we have determined that it is appropriate to include the Board of Directors' compensation in G&A costs.

#### *Comment 37*

SAICO believes that the Department should revise its submitted values for the clerical corrections and modifications presented at the first day of verification. These modifications were: (1) A single drained weight used in the COP/CV tables for a specific control number that had been incorrectly stated, (2) using actual cases

instead of standard cases of finished goods to calculate can and lid costs, and (3) revising the total net weights of the CPF production used to allocate variable overhead to correct for a minor mathematical error.

The petitioners state that the Department should revise SAICO's cost of production to reflect the actual costs obtained during verification.

#### *DOC Position*

The clerical corrections and modification were tested at verification and are appropriate adjustments. We have incorporated the adjustments into SAICO's COP and CV figures.

#### *Comment 38*

SAICO states that the sugar ratio used by the company in its COP and CV submission accurately reflects the differing amounts of sugar required in the production of heavy and light syrup products.

The petitioners did not comment on this issue.

#### *DOC Position*

We have relied on SAICO's submitted sugar ratio for allocating sugar costs between heavy and light syrup products for the final determination. SAICO's sugar ratio was found to be an average of the daily sugar ratio reported in the company's production logs. This ratio was analyzed and tested at verification with no discrepancies noted.

#### *Comment 39*

Both respondent and petitioners raise certain issues regarding the appropriateness of the methods used by SAICO to compute the weight of its pineapple juice and solid fruit for purposes of allocating costs.

#### *DOC Position*

We believe that the issues surrounding the appropriateness of SAICO's weight calculations are moot. For the final determination, SAICO's fresh pineapple costs were allocated based on its normal accounting system and not on the company's proposed weight-based methodology. See Comment 6 above.

#### *Malee*

#### *Comment 40*

Malee argues that the Department should exclude from its less than fair value calculation certain additional ocean freight and demurrage expenses it incurred on some of its sales to the United States. It asserts that it has already been reimbursed in part for these expenses by its freight forwarder and states that it will be reimbursed in

full. Further, Malee contends that in prior cases the Department has not included expenses where the respondent was seeking reimbursement for the expense. See, e.g., *Certain Internal-Combustion, Industrial Forklift Trucks from Japan: Final Results of Antidumping Duty Administrative Review*, 57 FR 3167, 3179 (January 28, 1992) (*Forklift Trucks from Japan*).

#### DOC Position

We agree with Malee that these expenses should be excluded from our calculations. In *Forklift Trucks from Japan*, the Department had no evidence on the record that the respondent's insurance company had rejected its claim, or that it would not be reimbursed in part or in full, for expenses associated with stolen trucks. In that instance, the Department determined that lack of this evidence was not dispositive that reimbursement would not occur, and thus the expenses were not treated as direct selling expenses.

In this case, at verification we found evidence that Malee was to be reimbursed by its freight forwarder for the demurrage charges. We examined Malee's records and confirmed that it has already been reimbursed in part for these expenses. Documents on the record indicate that Malee will be fully reimbursed for the remaining balance of the charges.

#### Comment 41

Malee argues that the Department should exclude certain interest expense which was reported as a bank charge in its sections B and C responses. This expense represents the interest expense for delayed payment.

Malee states that since the Department's only use for interest expenses in the sales response is for calculating the interest rate to be used for the imputed credit expenses, the Department does not include a company's actual interest expenses as a direct expense. Moreover, this interest expense for late payment is already included in Malee's interest expense reported in the COP/CV databases and thus has been double counted. As a result, the interest expense for late payment should be removed as a direct adjustment from the sales listing.

The petitioners argue that similar to other direct expenses, the late payment expense is an expense incurred by Malee for sales of CPF to its customers; therefore, the petitioners contend that this expense should be deducted as a direct expense. The petitioners claim that because this expense is charged by Malee's bank for late payment after

Malee has already received payment from the bank, it is not included in the imputed credit expense.

#### DOC Position

We agree with the petitioners that this interest expense should be deducted as a direct expense because this is a transaction specific bank charge. Because Malee received payment before it incurred this expense, it is not captured by our imputed credit cost. Furthermore, Malee's concern regarding double counting of late payment expenses is not substantiated because we do not have documents on the record demonstrating that this expense was recorded as an interest expense in Malee's accounting records. Accordingly, we continue to treat this expense as a bank charge.

#### Comment 42

The petitioners argue that the Department should adjust Malee's submitted factory overhead costs to include an amount for foreign exchange gains or losses incurred on purchases of machinery depreciated over a 7.5 year period. Additionally, the petitioners argue that the Department should adjust factory overhead by removing an offset for reimbursement of an overpayment on a machine purchase.

Malee agrees with the petitioners that fixed overhead should be adjusted for the depreciation effect of the foreign exchange gains or losses, but suggests that these amounts should be depreciated over five years. Malee did not comment on the reimbursement offset.

#### DOC Position

We agree with the petitioners, in part. Since the foreign exchange gains or losses relate directly to machinery purchases, we consider it appropriate to include them in the basis of the assets. Therefore, we adjusted Malee's fixed overhead costs to include the depreciation effect of the foreign exchange gains or losses. We calculated the revised depreciation expense using the five-year useful life suggested by Malee, which is a reasonable period for the company's equipment. Also, we removed the reimbursement offset from the overhead calculation as the company's normal record-keeping included this item in other income. We believe this is a reasonable treatment for a minor reimbursement. Malee's reclassification of this item to a credit in fixed overhead does not represent a more precise treatment, since the company did not identify the credit to the specific machine or even to the specific group which uses this

machinery. Therefore, we reclassified this credit to the other income account, in accordance with Malee's normal accounting treatment.

#### Comment 43

Malee argues that the activities of its parent company, Boon Malee, are not related to the production of the subject merchandise and, therefore, its G&A expenses should not be included in the G&A factor calculation. To support this position, Malee refers to the *Certain Carbon Steel Products from France*, 58 FR at 37136, where the Department agreed that the G&A expenses of a parent company whose activities were not related to production of the subject merchandise should not be used in place of those of the company actually producing the subject merchandise.

The petitioners claim that the G&A factor should be revised to include 1993 G&A expenses incurred by Malee's parent company. They argue that since Boon Malee is a holding company with no operations, its G&A expenses should be included in Malee's calculation. Malee's cite from *Certain Carbon Steel Products from France* is misplaced, according to the petitioners. They assert that the Department decided to base its G&A factor on the financial records of the producer, which included an allocation of the parent company's G&A expenses.

#### DOC Position

We agree with the petitioners. We noted that Malee is the only directly-owned active subsidiary of Boon Malee, which is a holding company that has no operations. In addition, we noted that Boon Malee's G&A expenses are related to a building that it rents to Malee. As discussed in *Certain Carbon Steel Products from France*, the Department's general approach to calculating a G&A factor is to use Malee's G&A expenses, along with an allocation of G&A expenses from the parent company. 58 FR at 37136; See also *Camargo Correa Metais v. United States*, Slip Op. 93-163 at 18 (CIT August 13, 1993). Therefore, we included Boon Malee's G&A expenses in our adjusted calculation of Malee's G&A factor.

#### Comment 44

The petitioners argue that we should revise Malee's submitted G&A expenses to include inventory write-downs made during the year. These adjustments are normally recorded by Malee to cost of sales. According to the petitioners, write-downs are a period expense, similar to G&A expenses, and thus should be reported as part of the fully-absorbed cost of products sold during

the period. The petitioners argue that both inventory write-downs and inventory write-offs have the same function of recognizing losses of future revenue and thus should be treated the same for COP.

Malee argues that inventory write-downs are not a cost of production and should not be included in COP. It claims that the only effect of these adjustments is on the value of inventory for balance sheet purposes, and on cost of goods sold for income statement purposes. Further, Malee argues that there is a fundamental difference between COP and cost of goods sold and states that the effect of such revaluation is self-cancelling over time. Malee claims that these write-downs are a method of absorbing losses more gradually as inventory declines in expected market value.

*DOC Position*

We agree with the petitioners that the inventory write-downs should be reflected in Malee's production costs. During verification, we noted that inventory write-downs are a normal, recurring period adjustment made annually by Malee. Also, we agree with the petitioners that such adjustments are part of the fully-absorbed cost of goods sold and should be included in the calculation of COP and CV. We therefore adjusted the G&A factor calculation to include the amount of inventory write-downs.

*Comment 45*

Malee asserts that certain proprietary payments, applied as offsets to COM, should be determined based upon the amounts earned rather than the amounts received during the POI. It claims that it is more appropriate to match the income earned during the POI with the expense incurred. It would be inappropriate, according to Malee, to use the amounts received during the POI, since they relate to production in a prior period.

The petitioners did not comment on this issue.

*DOC Position*

We agree with Malee, in part. We noted that certain proprietary payments are accrued at the time production occurs and the payment is effectively earned. However, we noted that other payments are not recorded as earned until a letter is received confirming the amount to be paid to Malee. This letter is normally received after the production is completed. We agree with Malee that the actual receipt date is a function of timing and cash flow and has no relationship to the production

occurring in that same period. Therefore, we adjusted the offset amounts to reflect the payments earned during the POI rather than the amounts received by Malee during the same period.

*Comment 46*

Malee asserts that the Department should recalculate COP and CV using the can and lid costs which were submitted to the Department at the start of verification as a correction of an error.

The petitioners claim that the revisions submitted at the start of verification should not have been accepted by the Department. These corrections adjusted per kilogram costs by a significant percentage, according to the petitioners. They argue that the explanation provided for this error was inadequate and should not have been accepted by the Department.

*DOC Position*

We agree with Malee. We reviewed Malee's explanation for its submitted cost revisions, which are described in the March 1, 1995, submission, and considered it to be reasonable. During verification, we reconciled the revised can and lid costs to stock reports and to the general ledger. Therefore, we accepted these costs for purposes of calculating COP and CV.

*Comment 47*

Malee states that the Department should recalculate COP and CV using the verified drained weight/net weight ratios, which were submitted at the start of verification. It also requests that the Department calculate the interest offset using the consolidated financial statements, as discussed at verification.

The petitioners did not comment on these issues.

*DOC Position*

We agree with Malee. We have used the submitted and reviewed drained weight/net weight ratios to calculate fruit costs and we used the consolidated financial statements to calculate CV interest expense.

*Continuation of Suspension of Liquidation*

We are directing the Customs Service to continue to suspend liquidation of all entries of CPF from Thailand, as defined in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 11, 1995, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service

shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Producer/manufacturer exporter	Weighted-average margin
Dole .....	2.36
TIPCO .....	38.68
SAICO .....	55.77
Malee .....	43.43
All Others .....	25.76

*ITC Notification*

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry in the United States, within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: May 26, 1995.

**Susan G. Esserman,**  
Assistant Secretary for Import Administration.

[FR Doc. 95-13695 Filed 6-2-95; 8:45 am]

BILLING CODE 3510-DS-P

[A-570-839]

**Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides With Rollers From the People's Republic of China**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Michelle Frederick, Office of Antidumping Investigations,

Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482-5288 or (202) 482-0186, respectively.

### Preliminary Determination

We preliminarily determine that certain partial-extension steel drawer slides with rollers (drawer slides) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

### Case History

Since the initiation of this investigation on November 21, 1994, (*Initiation of Antidumping Duty Investigation: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China (PRC)*, 59 FR 60773 (November 28, 1994) (*Initiation of Drawer Slides from the PRC*)), the following events have occurred:

On November 30, 1994, Guangdong Metals and Minerals Import and Export Group Corporation (GDMC), identified itself as an exporter of the subject merchandise during the period of investigation (POI).

On December 15, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its preliminary determination that there is a reasonable indication that the drawer slides industry in the United States is threatened with material injury by reason of imports from the PRC that are alleged to be sold at less than fair value.

On December 20, 1994, we sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and the China Chamber of Commerce for Machinery and Electronics Products Importers/Exporters (the Chamber) requesting the identification of drawer slides producers and exporters, and information on production and sales of drawer slides exported to the United States. MOFTEC did not respond to this survey.

We did, however, receive a response to the survey on January 6, 1995, from the Chamber. The Chamber indicated that it could not confirm whether any PRC company exported the subject merchandise to the United States during the POI. On December 23, and 30, 1994, we received letters from Hangzhou Metals, Minerals, Machinery and

Chemicals, Import/Export Corp. and Liaoning Machinery Import & Export Corporation, respectively. Both of these companies indicated that although they were named in the petition, they did not produce or export drawer slides during the POI. On January 3, 1995, two companies, Tai Ming Metal Products Co., Ltd. (Taiming), and Sikai Hardware & Electronic Equipment Manufacturing Co., Ltd. (SHEEM), which were not named in the petition, identified themselves as exporters of the subject merchandise to the United States during the POI.

Based on the foregoing information, on January 19, 1995, the Department sent full questionnaires including Attachment I (dealing with claims for Market Oriented Industry (MOI) status) and Attachment II (dealing with claims for Separate Rates), to MOFTEC and the Chamber. The Department requested that the questionnaire be transmitted to all companies that produce drawer slides for export to the United States and to all companies that exported drawer slides to the United States during the POI. Although requested, the Department never received confirmation that either MOFTEC or the Chamber had forwarded the questionnaire. The Department sent questionnaires to the three identified respondents (*i.e.*, GDMC, Taiming and SHEEM) on January 19, 1995.

On February 10, 1995, the Department received Section A responses from GDMC, Taiming and SHEEM. Supplemental information regarding Section A was provided at the Department's request on March 28, 1995.

On February 10, 1995, Taiming requested that it be allowed to exclude certain Exporter Sales Price (ESP) transactions of drawer slides given that these sales constituted a negligible portion of its sales during the POI. On February 21, 1995, the Department issued a decision memorandum granting Taiming's request. (See Memorandum to Barbara R. Stafford from the Team dated February 21, 1995, on file in Room B-099, U.S. Department of Commerce.)

On March 10, 1995, we received responses to the remaining sections of our questionnaire from the three respondents. Supplemental information requested by the Department was received on May 2, 1995. The petitioner filed comments on all responses submitted by the respondents on March 2 and 24, and May 8, 1995.

On March 30, 1995, the Department requested the parties to submit publicly available published information concerning surrogate country selection and factors of production valuation for

drawer slides. The Department also requested parties to identify those surrogate countries which produce merchandise comparable to the subject merchandise. On April 27 and May 4, 1995, the petitioner and respondents submitted the information and comments on these issues.

### Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on May 17, 1995, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the date of publication of an affirmative preliminary determination in the **Federal Register**. Pursuant to 19 CFR 353.20(b), because our preliminary determination is affirmative, and no compelling reasons for denial exist, we are granting respondents' request and postponing the final determination.

### Scope of Investigation

The subject merchandise in this investigation is certain partial-extension steel drawer slides of any length with rollers. A drawer slide is composed of two separate drawer slide rails. Each rail has screw holes and an attached polymer roller. The polymer roller may or may not have ball bearings. The subject drawer slides come in two models: European or Low-Profile and Over-Under or High-Profile. The former model has two opposing rails that provide one channel along which both rollers move and the latter has two opposing rails that provide two channels, one for each roller. For both models of drawer slides, the two opposing rails differ slightly in shape depending on whether the rail is to be affixed to the side of a cabinet or the side of a drawer. A rail may also feature a flange for affixing to or aligning along the bottom of a drawer.

Drawer slides may be packaged in an assembly pack with two drawer slides; that is, four rails with their attached rollers, or in an assembly pack with one drawer slide; that is, two rails with their attached rollers; or individually; as a drawer slide rail with its attached roller. An assembly pack may or may not contain a packet of screws.

Not included in the scope of this investigation are linear ball bearing steel drawer slides (with ball bearings in a linear plane between the steel elements of the slide), roller bearing drawer slides (with roller bearings in the wheel), metal box drawer slides (slides built into the side of a metal or aluminum drawer), full extension drawer slides (with more than four rails per pair), and

industrial slides (customized, high-precision slides without polymer rollers).

The subject merchandise is currently classifiable under subheading 8302.42.30 of the *Harmonized Tariff Schedule of the United States* (HTSUS). It may also be classified under 9403.90.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

#### *Period of Investigation*

The period of investigation is May 1, 1994, through October 31, 1994.

#### *Applicable Statute and Regulations*

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.

#### *Separate Rates*

Each of the responding Chinese companies has requested a separate, company-specific rate. Taiming and SHEEM are joint ventures which were established in China in 1990 and 1993, respectively. Taiming is a joint venture between a Chinese collective (which the respondent claims has no government ownership), a privately owned Hong Kong Company, and a privately owned Taiwanese company. The joint venture owns both the production and export facilities used to manufacture and export the drawer slides it sells to the United States. SHEEM is a joint venture between a privately-owned Chinese company (*i.e.*, owned by individuals) and a Hong Kong company. This joint venture also owns both the production and export facilities used to manufacture and export the drawer slides it sells to the United States.

According to GDMC's business license it is "owned by all the people". As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China* 59 FR 22585, 22586 (May 2, 1994) (*Silicon Carbide*), and the *Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* 60 FR 22545 (May 8, 1995) (*Furfuryl Alcohol*), ownership of a company by all the people does not require the application of a single rate. Accordingly, each of the three respondents is eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test

arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* 56 FR 20588 (May 6, 1991) (*Sparklers*) and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### *1. Absence of De Jure Control*

The respondents in this investigation have submitted a number of documents to demonstrate absence of *de jure* control. Taiming and SHEEM each submitted the "Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures" (April 13, 1988). The articles of this law authorize joint venture companies to make their own operational and managerial decisions. They also submitted the "Foreign Trade Law of the PRC" (May 12, 1994) which grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses.

GDMC submitted four enactments indicating that the responsibility for managing enterprises "owned by all of the people" is with the enterprises themselves and not with the government. These are the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988, (*1988 Law*) and the "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (*1992 Regulations*); "Foreign Trade Law of the PRC" (May 12, 1994); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992, (*Export Provisions*). In April 1994, the State Council enacted the "Emergent Notice of Changes in Issuing Authority for Export Licenses Regarding Public Quota Bidding for Certain Commodities (*Quota Measures*).

The *1988 Law* and *1992 Regulations* shifted control of enterprises owned by all the people from the government to the enterprises themselves. The *1988 Law* provides that enterprises owned "by the whole people" shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The *1988 Law* also has other provisions which support a finding that such enterprises have management independence from the government in making management decisions. The *1992 Regulations* provide that these

same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire their employees without government approval (Article XVII). The *Export Provisions* indicate those products that may be subject to direct government control. Drawer slides do not appear on the *Export Provisions* list nor on the *Quota Measures* list and are not, therefore, subject to export constraints.

As stated in previous cases, there is some evidence, that the provisions of the above-cited *1988 Law* and *1992 Regulations* regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (see "PRC Government Findings on Enterprise Autonomy," in *Foreign Broadcast Information Service-China-93-133* (July 14, 1993)). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

#### *2. Absence of De Facto Control*

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (see *Silicon Carbide* and *Furfuryl Alcohol*).

Each respondent has asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions, and there is no information on the record that suggests central government control over selection of management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to

obtain loans. In addition, respondents' questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters. This information supports a preliminary finding that there is a *de facto* absence of governmental control of export functions.

Consequently, we preliminarily determine that Taiming, SHEEM, and GDMC have met the criteria for the application of separate rates. We will examine this issue at verification and determine whether the questionnaire responses are supported by verifiable documentation.

#### *Nonmarket Economy Country Status*

The Department has treated the PRC as a nonmarket economy country (NME) in all past antidumping investigations and administrative reviews (see, e.g., *Silicon Carbide* and *Furfuryl Alcohol*). Neither respondents nor petitioners have challenged such treatment. Therefore, in accordance with section 771(18)(c) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base foreign market value (FMV) on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the FMV section, below.

#### *Surrogate Country*

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Kenya, Nigeria, Pakistan, Sri Lanka, and Indonesia are the countries most comparable to the PRC in terms of overall economic development (see Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Acting Director, Office of Antidumping Investigations, dated January 25, 1995). According to the information on the record, we have determined that India is also a significant producer of products comparable to drawer slides among these six potential surrogate countries. We found formed metal products suitable for furniture to be comparable merchandise to drawer slides. This is a broad category of merchandise which

encompasses a variety of products including drawer slides. Because other products included in this category undergo similar production process (*i.e.*, cutting, stamping and forming of metal) as drawer slides, and have similar end uses (*i.e.*, manufactured for use in home or office furniture) as drawer slides, we have determined that metal furniture parts constitute comparable merchandise. Accordingly, we have calculated FMV using Indian prices for the PRC producers' factors of production. We have obtained and relied upon published, publicly available information wherever possible.

#### *Fair Value Comparisons*

To determine whether sales of drawer slides from the PRC to the United States by Taiming, SHEEM, and GDMC were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

#### *United States Price*

For all respondents, we based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States and because ESP methodology was not otherwise indicated. We have included certain sales characterized by SHEEM as "trial" sales because we determined that they were sold in commercial quantities and at prices that were not aberrational.

We calculated purchase price based on packed, FOB Hong Kong and CIF U.S. port prices to unrelated purchasers in the United States, as appropriate. Where necessary, we made deductions for foreign inland freight, brokerage and handling, loading and containerization, ocean freight, and marine insurance. When these services were provided by a market economy supplier and paid for in a market economy currency, we used the actual cost. Otherwise, these charges were valued in the surrogate country.

#### *Foreign Market Value*

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the drawer slides for the three exporters. To calculate FMV, the reported factor quantities were multiplied by Indian values for those inputs purchased domestically from PRC suppliers. Where possible, we used public information for the surrogate values and adjusted the input prices to make them delivered

prices. For a complete analysis of surrogate values, see the Calculation Memorandum attached to the Concurrence Memorandum, dated May 30, 1995. We then added amounts for overhead, general expenses and profit, and packing expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

To value cold-rolled steel coil (1.2 mm), we used public information from the 1994 edition of *Statistics for Iron & Steel Industry In India*, published by the Steel Authority of India Limited (SAIL). We used this source instead of a U.S. Embassy report submitted by the petitioner because (1) it provided prices for steel that most closely resembled the specifications of the product used by the respondents and (2) because the data was more contemporaneous with the POI. We adjusted the factor values from January 1994 to the POI using wholesale price indices published in *International Financial Statistics (IFS)* by the International Monetary Fund and made deductions for certain domestic taxes to derive a tax-exclusive price.

The respondents, Taiming and SHEEM, argue that we should use the actual acquisition price of cold-rolled steel imported by the joint ventures from the Republic of Korea. However, cold-rolled steel imports from Korea are subject to U.S. antidumping (AD) and countervailing (CVD) duties orders and therefore the prices are likely to be unsuitable for use in this context. It is the Department's practice not to value factors based on data from producers subject to AD or CVD orders. See *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833, 48841 (September 20, 1993) (*Helical Spring Lock Washers*). Similarly, GDMC argues that the Department should rely on its acquisition price of Japanese steel imports in calculating FMV because GDMC purchases steel from Japan in U.S. dollars. However, the relevant transaction for purposes of constructing a surrogate FMV is the transaction between the producer and the supplier of the input.

Because GDMC resells the steel to the producer in Chinese RMB, the Department did not rely on the Japanese acquisition price (*e.g.*, see *Final Determination of Sales at Less Than Fair Value: Coumarin From the PRC*, 59 FR 66895 (December 28, 1994)) (*Coumarin*). Although the drawer slides producer uses the Japanese steel exclusively for the manufacture of drawer slides for GDMC to export, this does not detract from the central fact that the transaction between GDMC and the producer is in

a non-convertible currency. See *Final Determination of Sales at Less Than Fair Value: Ferrovandium and Nitrided Vanadium From the Russian Federation*, 60 FR 102 27957 (May 26, 1995). Further GDMC does not purchase steel exclusively for use in drawer slides production. Therefore, the price for the large quantities purchased by GDMC does not necessarily reflect prices for the smaller quantities purchased by drawer slides producers.

To value epoxy powder, steel rivets, polymer wheels, coloring powder and nylon powder, we used public information from the August 1994 *Monthly Statistics of the Foreign Trade of India, Imports (Indian Import Statistics)*. Although certain respondents who subcontract certain components of drawer slides (e.g., steel rivets and polymer wheels) argue that the Department should value the factors of production based upon their subcontractors' experience, we based the value for these inputs on the price of a completed input. In two past cases, *Helical Spring Lock Washers* and *Final Determination of Sales Less Than Fair Value: Disposable Pocket Lighters From the PRC*, 60 FR 87 22359 (May 5, 1995), the Department did use the subcontractor's factors of production in calculating FMV. In those instances, the subcontractor further processed the subject merchandise into a finished product and the Department was unable to obtain surrogate information for valuing this further processing. However, in this investigation, wheels and rivets are completed sub-components inserted into the respondents' product and we were able to obtain surrogate information to value these sub-components. Furthermore, valuing the cost to the producer of the subject merchandise for inputs is consistent with the statute's direction to measure and value "the factors of production utilized in the production of the merchandise." All inputs that were purchased were valued on the basis of a surrogate. Therefore, it is appropriate to base the value for these inputs on the price of a completed product. This is consistent with our practice in recent investigations (see *Furfuryl Alcohol* and *Coumarin*.)

For degreaser, a material not listed in *Indian Import Statistics*, we relied on *The Analyst's Import Reference 1993, Chemical & Pharmaceutical Products (The Analyst)*, published by Genasys Multimedia of Bombay, India. We also relied on *The Analyst* for valuing phosphoric acid and phosphorous powder because data from the *Indian Import Statistics* was based on negligible quantities or a broadly

defined import category. For hydrochloric acid, we relied on a 1993 price quote used in *Coumarin from the PRC* because the *Indian Import Statistics* and *The Analyst* are based on an Indian import category that is not exclusive to hydrochloric acid (see *Coumarin*). We adjusted these factor values to the POI using wholesale price indices published by *IFS*.

To value labor, we used information from the U.S. Department of Labor's *1992 Foreign Labor Trends* which provided Indian labor rates for skilled, semi-skilled, and unskilled workers. To determine the number of hours in an Indian work week, we used the *Country Reports: Human Rights Practices for 1990*. We adjusted the factor value to the POI using consumer price indices published in the *IFS*, consistent with our treatment of this value in past NME cases.

To value factory overhead, including energy, we calculated a percentage based on industry group income statements for "Processing and Manufacture—Metals, Chemicals, and Products thereof" from the September 1994 *Reserve Bank of India Bulletin (1994 RBI)*.

For selling, general and administrative (SG&A) expenses, we derived a percentage based on 1994 *RBI* data. The respondents argue that the ten percent statutory minimum is more appropriate because the *RBI* data is inclusive of selling commissions, which are not incurred by most of the respondents. However, in NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (with regard to, for example, actual selling expenses) on the premise that the actual experience can not be meaningfully considered. Accordingly, we are applying the surrogate-based SG&A expenses. See, e.g., *Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Ukraine* 60 FR 16432 (March 30, 1995).

For profit, we relied on the statutory minimum of eight percent because the calculated rate based on 1994 *RBI* data was less than eight percent. We added packing, using Indian values obtained from the August 1994 *Indian Import Statistics* and *Statistics for Iron & Steel Industry in India*. Packing values were inflated to the POI using *IFS* price indices.

#### *Best Information Available (BIA)*

The following discussion regarding the application of BIA applies to all exporters other than those that have responded to our questionnaires. Because no information has been presented to the Department to prove

otherwise, any exporter of subject merchandise that did not respond to the Department's questionnaires is presumed to be under government control, and, therefore, is not entitled to its own separate dumping margin. The evidence on record indicates the responding companies may not account for all exports of the subject merchandise. In the absence of responses from all exporters, therefore, we are basing the PRC-Wide rate on BIA, pursuant to section 776(c) of the Act (see *Silicon Carbide* and *Manganese Sulfate*).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins to those respondents that did not cooperate in an investigation. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation (see *Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Federal Republic of Germany*, 54 FR 18992 (May 3, 1989)).

In this investigation, since the evidence indicates that not all PRC exporters of drawer slides responded to our questionnaire, any PRC company, other than those specifically identified below, will be subject to the PRC-Wide rate. In this investigation, that rate is the highest margin alleged in the petition, as revised by the Department, because it is higher than the highest calculated rate of any respondent. (See *Initiation of Drawer Slides from the PRC*.)

#### *Verification*

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

#### *Suspension of Liquidation*

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of drawer slides from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated dumping margins by which the FMV

exceeds the USP, as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Taiming Metal Products Co., Ltd.	0.66
Sikai Hardware Electronic Equipment Manufacturing Co. Ltd. ...	5.22
Guangdong Metals and Minerals Import and Export Group Corp./ Guangdong Metals and Minerals, Import and Export Group, Metal Products Trading Company .....	24.48
PRC-Wide Rate .....	55.69

The PRC-Wide rate applies to all entries of subject merchandise except for entries from exporters that are identified individually above.

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 23, 1995, and rebuttal briefs, no later than August 30, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held at 1:00 p.m. on September 6, 1995, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In

accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination within 135 days after the publication of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: May 30, 1995.  
**Susan G. Esserman**  
*Assistant Secretary for Import Administration.*  
 [FR Doc. 95-13703 Filed 6-2-95; 8:45 am]  
 BILLING CODE 3510-DS-P

**National Oceanic and Atmospheric Administration**

[I.D. 051195B]

**North Pacific Fishery Management Council; Agenda Change**

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

**ACTION:** Notice of agenda change.

**SUMMARY:** Agendas for public meetings of the North Pacific Fishery Management Council (Council) and its advisory bodies, which are scheduled to meet June 8-9, 1995, and June 11-18, 1995, were published on May 30, 1995. Subsequently, the following modifications have been made to the published meeting agendas. All other information previously published remains unchanged.

**FOR FURTHER INFORMATION CONTACT:** North Pacific Fishery Management Council, (907) 271-2809.

**SUPPLEMENTARY INFORMATION:** The initial agenda was published on May 30, 1995 (60 FR 28087). For the meeting of the Scientific and Statistical Committee, scheduled for June 8-9, 1995, at the Holiday Inn in Anchorage, AK, agenda item (3), relating to observer specifications for 1996, will instead be a review of a proposed regulatory amendment to continue the current observer coverage levels through 1995. Agenda item (7), Electronic Reporting Requirements, has been removed from the agenda.

For the meetings of the Advisory Panel and the Council, scheduled during the week of June 11, 1995, at the Grand Aleutian Hotel in Dutch Harbor, AK, the following modifications have been made:

(1) Discussion of agenda item (4), relating to observer specifications for 1996, will instead be a review of a

proposed regulatory amendment to continue current observer coverage levels through 1995.

(2) Agenda item (5), the Sablefish and Halibut Individual Fishery Quota Program, has been amended to add a report from the Implementation Team, as well as a discussion of International Pacific Halibut Commission Area 4 suballocations.

(3) A discussion of the Council's next steps in comprehensive rationalization for the groundfish and crab fisheries off Alaska will be added to the agenda.

Dated: May 31, 1995.  
**Richard W. Surdi,**  
*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*  
 [FR Doc. 95-13705 Filed 6-2-95; 8:45 am]  
 BILLING CODE 3510-22-F

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**Increase in a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic**

May 30, 1995.  
**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

**EFFECTIVE DATE:** June 7, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States has agreed to increase the 1995 Guaranteed Access Level (GAL) for Category 444.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see **Federal Register** notice 59 FR 65531, published on December 20, 1994). Also see 60 FR 17321, published on April 5, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 30, 1995.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 30, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1995 and extends through December 31, 1995.

Effective on June 7, 1995, you are directed to increase the current guaranteed access level for Category 444 to 130,000 numbers.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 95-13620 Filed 6-2-95; 8:45 am]

BILLING CODE 3510-DR-F

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**COMMODITY FUTURES TRADING COMMISSION**

**Advisory Committee on CFTC-State Cooperation; Meeting**

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, § 10(a), that the Commodity Futures Trading Commission's Advisory Committee on CFTC-State Cooperation will conduct a public meeting on June 28, 1995, in the Hearing Room on the basement level of the Commission's Washington, D.C. headquarters, 2033 K St., N.W., Washington, D.C. 20581. This meeting will begin at 9:30 a.m. and last until 12:30 p.m. The agenda will consist of the following:

**Agenda**

1. Opening Remarks—Mary L. Schapiro, Chairman, CFTC; Barbara Pedersen Holum, Commissioner, CFTC and Chairman, Advisory Committee on CFTC-State Cooperation;

2. Discussion of state/federal enforcement issues;

3. Report on enforcement issues from representatives of key congressional committees;

4. Briefing by various CFTC personnel on the Commission's recent enforcement actions; and

5. Discussion of other questions of concern to Advisory Committee members.

The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on matters of joint concern to the States and the Commission arising under the Commodity Exchange Act, as amended. The purposes and objectives of the Advisory Committee on CFTC-State Cooperation are more fully set forth in the March 8, 1994 Ninth Renewal Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Barbara Pedersen Holum, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Advisory Committee on CFTC-State Cooperation c/o Commissioner Barbara Pedersen Holum, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Commissioner Holum in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on May 30, 1995.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 95-13638 Filed 6-2-95; 8:45 am]

BILLING CODE 6351-01-M

**CONSUMER PRODUCT SAFETY COMMISSION**

**Commission Agendas and Priorities; Public Hearing**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 1997, which begins October 1, 1996. Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 1997 will become part of the public record.

**DATES:** The hearing will be on June 23, 1995, immediately after the conclusion of the Commission's meeting which begins at 10 a.m. the same day. Written comments and requests from members of the public desiring to make oral presentations must be received by the Office of the Secretary not later than June 16, 1995. Persons desiring to make oral presentations at this hearing must submit a written text of their presentations not later than June 16, 1995.

**ADDRESSES:** The hearing will be in room 420 of the East-West Towers Building, 4330 East West Highway, Bethesda, Maryland. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned "Agenda and Priorities" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, room 502, 4330 East West Highway, Bethesda, Maryland.

**FOR FURTHER INFORMATION CONTACT:** For information about the hearing or to request an opportunity to make an oral presentation, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0800; telefax (301) 504-0127.

**SUPPLEMENTARY INFORMATION:** Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 1997, which begins on October 1, 1996.

For this reason, the Commission will conduct a public hearing on June 23, 1995, to receive comments from the public concerning its agenda and priorities for fiscal year 1997. The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

The Commission is charged by Congress with protection of the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers in or around their homes, in schools, in recreation, and other settings, its staff and budget are limited. Section 4(j) of the CPSA expresses Congressional direction to the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention.

When the Commission selects priorities, it does so in accordance with its policy statement governing establishment of priorities codified at 16 CFR 1009.8. That policy statement includes the following factors to be considered by the Commission when selecting its priorities:

- Frequency and severity of injuries.
- Causality of injuries.
- Chronic illness and future injuries.
- Costs and benefits of Commission action.
- Unforeseen nature of a risk of injury.
- Vulnerability of the population at risk.
- Probability of exposure to hazard.

The order of listing of these criteria does not indicate their relative importance.

Persons who desire to make oral presentations at the hearing on June 23, 1995, should call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 504-0800, telefax (301) 504-0127, not later than June 16, 1995.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text of their presentations to the Office of the Secretary not later than June 16, 1995. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will be immediately after the completion of the Commission meeting which begins at 10 a.m. on June 23, 1995, and will conclude the same day.

Written comments on the Commission's agenda and priorities for fiscal year 1997, should be received in the Office of the Secretary not later than June 16, 1995.

Dated: May 30, 1995.

**Sadye E. Dunn,**

Secretary, Consumer Product Safety Commission.

[FR Doc. 95-13598 Filed 6-2-95; 8:45 am]

BILLING CODE 6355-01-P

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title; Applicable Form; and OMB Control Number:* Application for the U.S. Army ROTC 2 and 3 year Scholarship; ROTC Cadet Command Form 166-R; OMB Control Number 0702-0083.

*Type of Request:* Revision.  
*Number of Respondents:* 4,400.  
*Responses Per Respondent:* 1.  
*Annual Responses:* 4,400.  
*Average Burden Per Response:* 30 minutes.

*Annual Burden Hours:* 2,200.  
*Needs and Uses:* The application for a U.S. Army ROTC scholarship is one of the primary tools used in the selection

process for scholarship applicants. These scholarships provide highly qualified men and women with the opportunity to pursue a commission in the U.S. Army. The information collected hereby, provides the Department of the Army with the data necessary to evaluate and determine scholarship awards.

*Affected Public:* Individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302.

Dated: May 30, 1995.

**Patricial L. Toppings,**

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 95-13599 Filed 6-2-95; 8:45 am]

BILLING CODE 5000-04-M

## Department of the Army

### Corps of Engineers

#### Intent To Prepare a Draft Environmental Impact Statement, Improvements for Juvenile Salmon Migration, Lower Snake River

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent to prepare a draft EIS.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) intends to prepare a Draft Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA). The EIS will investigate proposals for use of reservoir drawdown and surface-oriented bypass systems to improve juvenile salmon migration by decreasing water travel time through reservoirs and reducing stress associated with dam passage at the four lower Snake River dams and reservoirs. Alternatives will consider various designs for structural modifications and combination of the proposed modifications to these four dams.

Drawdown of the four lower Snake River reservoirs below minimum

operating pool elevation is being evaluated as a means to increase flow velocities through the lower Snake River. Increased flow velocities are thought to decrease juvenile salmon travel time through the reservoir system and thereby presumably increase survival. Surface oriented bypass is being evaluated to improve guidance, and thereby reduce stress and associated mortality from passage of juvenile salmon through the dams.

Proposed alternatives focus on major structural modifications to existing Corps dams. These include Lower Granite, Little Goose, Lower Monumental, and Ice Harbor dams, located between Lewiston, Idaho and Pasco, Washington. A "no action" alternative will also be considered.

This action is being considered in response to a need to protect stocks of Snake River salmon that have been listed as threatened and endangered under the Endangered Species Act. National Marine Fisheries Service, on March 2, 1995, issued a biological opinion (BiOp) on operation of the Federal Columbia River Power System. The subject alternatives are being evaluated in response to recommendations contained in that document and the Federal agencies decision to implement the BiOp. The "Reasonable and Prudent Alternative" identified in the BiOp calls for an interim operation and examination of long-term configuration changes including drawdowns and surface bypass.

The U.S. Army Corps of Engineers, Walla Walla District is the lead agency in preparing this EIS. Cooperating agencies may be identified during the scoping process.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter F. Poolman, Walla Walla District, Corps of Engineers, CENPW-PL-ER, 201 North Third Avenue, Walla Walla, Washington 99362-1876, (509) 527-7261.

**SUPPLEMENTARY INFORMATION:** The proposed actions are being considered under NEPA, the Endangered Species Act, the Fish and Wildlife Coordination Act, and the authorizing legislation for the respective projects potentially involved in the proposed actions. This EIS is being developed as part of the Corps' System Configuration Study (SCS) Phase II. The SCS was initiated in response to the Northwest Power Planning Council's Fish and Wildlife Program Amendments, issued in December 1991, and is the Corps of Engineers' program for evaluating structural modifications at the Lower Snake and Columbia River dams to

improve survival of salmon. Phase II is being proposed in response to evaluation requested by National Marine Fisheries Service (NMFS) in its Endangered Species Act Section 7 Consultation, Biological Opinion for Reinitiation of Consultation on 1994-1998 Operation of the Federal Columbia River Power System and the Juvenile Transportation Program in 1995 and Future Years, (BiOp), issued March 2, 1995.

In the BiOp, NMFS included a Reasonable and Prudent Alternative which includes immediate, intermediate and long-term actions concerning the operation and configuration of certain dams and reservoirs in the Columbia and Snake River basins. The strategy is an adaptive approach which requires aggressively pursuing studies and decisions on possible intermediate and long-term structural configuration changes, and obtaining scientific information to make those decisions. In the near-term, the operation is designed to provide conditions NMFS considers will improve mainstream survival while providing conditions to maximize the ability to gather scientific information to make intermediate and long-term decisions. For each of these decisions, NEPA documentation will be prepared as needed. For instance, the System Operation Review EIS is addressing power system operational strategy recommended in the BiOp.

This EIS is addressing one of the potential long-term alternatives for implementation of drawdown and/or surface bypass at the four lower Snake River dams. The Reasonable and Prudent Alternative included a schedule for completing the major modifications required under drawdown and bypass alternatives to these four dams. By mid-1996, an interim evaluation report on the drawdown and surface bypass alternative is scheduled to be completed to assist in identifying a preferred drawdown and surface bypass alternative for detailed engineering and design evaluations. The Reasonable and Prudent Alternative also specifies completion of necessary studies and engineering/design work no later than 1999 in preparation for potential drawdown and/or surface bypass implementation at the four lower Snake River Reservoirs by the year 2000.

The U.S. Army Corps of Engineers, North Pacific Division, published a Record of Decision (ROD) on Reservoir Regulation and Project Operation for 1995 and Future Years on March 10, 1995, in response to the NMFS BiOp. The ROD identified actions to be taken by the Corps, including the drawdowns

and bypass being considered in the proposed EIS.

### 1. Proposed Actions

The proposed actions are being considered in response to the listing of certain salmon species and designation of critical habitat for these species. The Snake River sockeye salmon was listed as endangered on November 20, 1991 with an effective date of December 20, 1991 (56 FR 58,619). The spring/summer chinook and fall chinook were originally listed as threatened on April 22, 1992 with an effective date of May 22, 1992 (57 FR 14,653). Subsequently, the spring/summer chinook and fall chinook were proposed for listing as endangered (Interim Emergency Rule, August 18, 1994, 59 FR 42,529 with correction published on April 17, 1995 at 60 FR 19,342 and proposed rule, December 28, 1994, 59 FR 66,784). Critical habitat was designated for the Snake River sockeye, spring/summer chinook, and fall chinook salmon on December 28, 1993 (FR 68,543).

The proposed actions include potential use of reservoir drawdown and surface oriented bypass systems to improve juvenile salmon migration through the four lower Snake River dams and reservoirs as recommended by NMFS as a "Reasonable and Prudent Alternative to the Proposed Action" in the BiOp. The actions ultimately proposed for implementation in future years may involve some combination of measures for the lower Snake River Basin.

### 2. Alternatives

Alternatives being considered for the proposed action include a range of measures to improve downstream passage for juvenile anadromous salmon at the four lower Snake River projects. Alternatives address: 1) reducing reservoir-associated mortality; and/or 2) reducing dam-passage mortality.

a. No action—The no action alternative identifies the "without project condition", or those activities which will occur or continue to occur whether or not the proposed actions identified in the EIS are implemented. Development of technology for juvenile bypass, operation of juvenile salmon transportation programs, flow augmentation releases from storage reservoirs, spill for fish passage, and monitoring and evaluation are planned to continue with the no action alternative.

b. Lower Snake River Drawdown—Drawing down the lower Snake River reservoirs below designed operations levels during the juvenile salmon out migration season is intended to decrease

the water travel time by reducing the cross-sectional area of the reservoir and presumably reduce the juvenile downstream migration time. There are a number of drawdown options of the four lower Snake River reservoirs which will be examined in the EIS. These include: (1) Drawing the reservoirs down to the near-natural river elevation during the entire year; (2) drawing down to natural river for a portion of the year; and (3) drawing the reservoirs down to a mid-elevation level, such as spillway crest (lowest structural elevation that water will pass over the dam), for a portion of the year.

c. Surface Bypass Systems—This element defines and evaluates potential improvements to juvenile fish facilities at the four projects. This includes: (1) a new surface bypass structure for passage of salmon around the powerhouse, utilizing spill or a bypass flume; (2) a new surface bypass structure to collect fish by transport by barge and truck; (3) utilizing a combination of transport and bypass around the dams at one or a combination for the four lower Snake River projects; and (4) use of surface bypass systems in drawdown alternatives.

### 3. Scoping Process

The Corps invites affected Federal, state, and local agencies, Native American tribes, and other interested organizations, parties and the public to participate in the scoping process for the EIS. Input from other agencies and organizations that have a special interest and expertise in key resource areas such as fisheries, wildlife, water quality, navigation, hydropower production, recreation, cultural resources, and irrigation is welcome. The Corps seeks input on specific drawdown concepts and operational scenarios, and potential surface bypass alternatives. Resources impacts and other effects of the alternatives are solicited. The EIS process includes environmental review and consultation in accordance with other environmental statutes, rules, and regulations which apply to the proposed action. Further compliance with the Endangered Species Act may include preparation of one or more Biological Assessments and formal consultation with NMFS and the U.S. Fish and Wildlife Service.

### 4. Scoping Meetings

Four public scoping meeting and workshops for the EIS will be held in the region in mid-July, 1995. They will be held in Boise and Lewiston, Idaho, Spokane and Pasco, Washington. Confirmation dates, location and times will be advertised and provided in a

scoping letter that will be widely distributed throughout the region.

### 5. Availability

An Interim Status Report is tentatively scheduled for release to the public and agencies for review during October, 1996 in order to facilitate decisions necessary to the BiOp. The Draft EIS should be available in 1998.

Dated: May 19, 1995.

**James S. Weller,**

*LTC, En Commanding,*

[FR Doc. 95-13570 Filed 6-2-95; 8:45 am]

BILLING CODE 3710-GC-M

## DEPARTMENT OF ENERGY

### Environmental Management Site Specific Advisory Board, Savannah River Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site.

**DATES:** Tuesday, June 20, 1995: 8:30 a.m.–11:30 a.m.

**ADDRESSES:** Savannah River Site Main Administration, Building 703-41A, Aiken, S.C.

**FOR FURTHER INFORMATION CONTACT:** Tom Hennan, Manager, Environmental Restoration and Solid Waste, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802 (803)725-8074.

**SUPPLEMENTARY INFORMATION:** This notice replaces the notice published June 1, 1995, announcing an open meeting on June 8, 1995. Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

#### Agenda:

Tuesday, June 20, 1995

8:30 a.m.—Nuclear Materials Management Subcommittee Report and discussion of recommendations regarding the Draft Foreign Research Reactor Spent Nuclear Fuel Environmental Impact Statement

10:45 a.m.—Public Comment Session (5-minute rule)

11:30 a.m.—Adjourn

### Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Heenan's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

### Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Tom Heenan, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling him at (803)-725-8074.

Issued at Washington, DC on May 31, 1995.

**Rachel Murphy Samuel,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 95-13681 Filed 6-2-95; 8:45 am]

BILLING CODE 6450-01-P

### Invention Available for License

**AGENCY:** Office of General Counsel, Department of Energy.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Energy announces that the following inventions, and possible foreign counterparts, are available for license in accordance with 35 U.S.C. 207-209. U.S. Patent No. 5,384,048, "Bioremediation of Contaminated Groundwater;" U.S. Patent No. 5,189,359, "Solid State Safety Jumper Cables;" U.S. Patent No. 5,217,009, "Compact Electronic Bone Growth Stimulator;" U.S. Patent No. 5,137,314, "Catwalk Grate Lifting Tool;" and U.S. S.N. 843,027, "Method and Device for Disinfecting a Toilet Bowl."

A copy of the patents may be obtained, for a modest fee, from the U.S.

Patent and Trademark Office, Washington, D.C. 20231. A copy of the patent application may be obtained, for a modest fee, from the National Technical Information Service (NTIS), Springfield, Virginia 22161.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585; Telephone (202) 586-2802.

**SUPPLEMENTARY INFORMATION:** 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR Part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the **Federal Register**.

Issued in Washington, D.C., on May 30, 1995.

**Agnes P. Dover,**

*Deputy General Counsel for Technology Transfer and Procurement.*

[FR Doc. 95-13679 Filed 6-2-95; 8:45 am]

BILLING CODE 6450-01-M

### Molecular Structure Corporation

**AGENCY:** Office of the General Counsel, Department of Energy.

**ACTION:** Notice of intent to grant exclusive patent license.

**SUMMARY:** Notice is hereby given of an intent to grant to Molecular Structure Corporation, of The Woodlands, Texas, an exclusive license to practice the invention described in U.S. Patent No. 4,953,191, entitled "High Intensity X-Ray Source Using Liquid Gallium." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209(c), unless within 60 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

**DATES:** Written comments or nonexclusive license applications are to be received at the address listed below no later than August 4, 1995.

**ADDRESSES:** Office of Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F-067, 1000 Independence Avenue SW., Washington, D.C. 20585; Telephone (202) 586-4792.

**SUPPLEMENTARY INFORMATION:** 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Molecular Structure Corporation, of The Woodlands, Texas, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 4,953,191, and has a plan for commercialization of the invention.

The proposed license will be exclusive as deemed appropriate, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of any written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, D.C., on May 30, 1995.

**Agnes P. Dover,**

*Deputy General Counsel for Technology Transfer and Procurement.*

[FR Doc. 95-13678 Filed 6-2-95; 8:45 am]

BILLING CODE 6450-01-M

### Alaska Power Administration

#### Snettisham Project—Notice of Order Confirming and Approving an Adjustment of Power Rates on an Interim Basis

**AGENCY:** Alaska Power Administration, DOE.

**ACTION:** Notice of adjustment of power rates—Snettisham Project, rate schedules SN-F-5, SN-NF-8, SN-NF-9, and SN-NF-10.

**SUMMARY:** Notice is hereby given that the Deputy Secretary approved on April 28, 1995, Rate Order No. APA 13 which adjusts the present power rates for the Snettisham Project. This is an interim rate action effective May 1, 1995, for a period of 12 months, unless extended, and is subject to final confirmation and approval by the Federal Energy Regulatory Commission (FERC) for a period of up to five years.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lloyd Linke, Director, Power Division, Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, AK 99801-8545, (907) 586-7405.

**SUPPLEMENTARY INFORMATION:** On December 6, 1994, the Alaska Power Administration (APA) published a **Federal Register** notice of its intention to adjust current power rates for the Snettisham Project for a period of up to five years. The present rates, as approved by FERC at 57 FERC ¶ 62,235, are 32.1 mills per kilowatthour for firm energy. There is a variable rate for based on the cost of heating oil of 27.1 mills per kilowatthour for non-firm energy based on energy used in place of wood burning. These rates were approved by FERC Order, Docket No. EF92-1021-000 issued December 23, 1991, for the period October 1, 1991, through September 30, 1996. Based on the annual certification of rates, APA now proposes that rates be adjusted beginning May 1, 1995, for a period of up to five years. The new rates would be 34.7 mills per kilowatthour for firm energy, with the non-firm rates to remain the same. The **Federal Register** notice also indicated APA's intention to seek interim approval of the proposed rates by the Deputy Secretary of Energy pending final confirmation and approval of the rates by FERC.

Following review of APA's proposal within the Department of Energy, on April 28, 1995, I approved on an interim basis Rate Order No. APA-13 which adjusts the present Snettisham Rates for period of up to five years beginning May 1, 1995, subject to final confirmation and approval by FERC.

Issued at Washington, DC, April 28, 1995.

**Bill White,**

*Deputy Secretary.*

**Order Confirming and Approving Power Rates on an Interim Basis**

April 28, 1995.

In the matter: of Alaska Power Administration—Snettisham Project Power Rates; Rate Order No. APA-13.

This is an interim rate action subject to review and approval of the Federal Energy Regulatory Commission. It is made pursuant to the authorities delegated in DOE Delegation Order No. 0204-108, Amendment No. 3 to that Order.

**Background**

Section 204 of the 1962 Flood Control Act (76 Stat. 1194), authorizes the Crater-Long Lakes Division of the Snettisham Project and provides authority and general criteria for marketing Snettisham project power. Section 201 of the 1976 Water Resources Development Act, Public Law 94-587, provides additional criteria. The DOE Organization Act (91 Stat. 565) assigns responsibilities for Snettisham to the Secretary of Energy acting by and through the APA Administrator.

The Snettisham Project was constructed in two phases. The Long Lake phase went into commercial service in 1975. The Crater Lake phase went into commercial service in 1991. Section 201 of the 1976 Water Resource Development Act, Public Law 94-587, set a repayment period of 60 years for the Long Lake portion of the project and fixed a schedule for its repayment. The Crater Lake investment carries a 50 year repayment period.

The Snettisham Project is a single purpose project comprised of two separate lake taps, power tunnels and penstocks; a single underground powerplant housing three units with a combined capacity of 78,210 kw; 41 miles of 138 kv overhead transmission line and three miles of submarine cable; and a single substation serving the Juneau area. A small amount of energy is sold to the State of Alaska for operation of a fish hatchery at Snettisham. Rate Schedules SN-F-4, SN-NF-5, SN-NF-6, SN-NF-7 now in effect for the Snettisham Project were confirmed and approved by order of the Federal Energy Regulatory Commission, Docket No. EF92-1021-000 issued December 23, 1991 for a period ending September 30, 1996.

**Discussion**

*System Repayment*

Studies prepared by the Alaska Power Administration, as required by DOE Policy No. RA 6120.2, demonstrate that the present firm rate must be increased to provide sufficient revenue to meet requirements for the rate period and meet project repayment criteria by the end of the repayment period. On that basis, the Alaska Power Administration proposes an adjustment of the firm rate for a period not to exceed five years. The Administrator of Alaska Power Administration has certified that the new rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

*Environmental Impact*

Alaska Power Administration has concluded with Departmental concurrence that this rate action will have no significant environmental impact within the meaning of the Environmental Policy Act of 1969. It is the Alaska Power Administration's determination that the rate adjustment does not exceed the rate of inflation and therefore is categorically excluded from the NEPA process as defined in 40 CFR 1508.4 and is listed as a categorical exclusion for DOE in 10 CER 1021, Appendix B4.3. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

*Availability of Information*

Information regarding this rate action, including studies and other supporting material, is available for public review in the offices of the Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska.

*Public Notice and Comment*

Opportunity for public review and comment on the rate action was announced by notice in the **Federal Register** on December 6, 1994, and in a paid advertisement of a newspaper in the market area on December 22 and 23, 1994. The notice provided for a comment period of 90 days following publication in the **Federal Register**. An informational meeting was held with an advisory committee to the Juneau City Assembly. A new article on the proposed rate action was published in the Juneau Empire on February 7, 1995. A public information and comment forum was scheduled in Juneau, Alaska on January 12, 1995, with public comment period ending March 7, 1995. The public information and comment forum was canceled on January 6, 1995,

due to lack of interest, in accordance with 10 CFR 903.15(b), 10 CFR 903.15(c) and the Alaska Power Administration's prior notices of the public forum.

*Submission to FERC*

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective May 1, 1995, attached Wholesale Power Rate Schedules SN-F-5 SN-NF-8, SN-NF-9 and SN-NF-10. These rate schedules shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, DC, this 28 day of April 1995.

**Bill White,**

*Deputy Secretary.*

[Schedule SN-NF-5]

**United States Department of Energy  
Alaska Power Administration**

Snettisham Project, Alaska

**Schedule of Rates for Wholesale Firm Power Service**

*Effective*

May 1, 1995 for a maximum of five years.

*Available*

In the area served by the Snettisham Project, Alaska.

*Applicable*

To wholesale power customers for general power service.

*Character and Conditions of Service*

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

*Monthly Rate*

Capacity charge: None.  
Energy charge: Firm energy at 34.7 mills per kilowatt-hour.

*Minimum Annual Capacity Charge*

None.

*Billing Demand*

Not applicable.

**Adjustments**

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

[Schedule SN-NF-8]

**United States Department of Energy  
Alaska Power Administration**

Snettisham Project, Alaska

**Schedule of Rates for Interruptible  
Power Service**

*Effective*

May 1, 1995 for a maximum of five years.

*Available*

In the area served by the Snettisham Project, Alaska.

*Applicable*

To wholesale power customers for resale to their large commercial and government dual-fuel customers. Availability of energy will be determined by Alaska Power Administration.

*Character and Conditions of Service*

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

*Monthly Rate*

Capacity charge: None.

Energy charge: Variable rate pegged to price of heating oil purchased by the State of Alaska or City and Borough of Juneau, whichever is lower. Refer to Table 1 listing oil prices and comparable wholesale rates.

*Minimum Annual Capacity Charge*

None.

*Billing Demand*

No applicable.

*Adjustments*

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

**Table 1**

$$\text{Wholesale rate} = 1.00 + \left( \frac{9 \times \text{OIL} - 1.91}{28.3} - 1.91 \right) \div 2$$

Fuel oil (\$/gal)	Wholesale rate (cents/kwh)	Wholesale rate (mills/kwh)
0.50	0.84	8.4
0.52	0.87	8.7
0.54	0.90	9.0
0.56	0.94	9.4
0.58	0.97	9.7
0.60	1.00	10.0
0.62	1.03	10.3
0.64	1.06	10.6
0.66	1.09	10.9
0.68	1.13	11.3
0.70	1.16	11.6
0.72	1.19	11.9
0.74	1.22	12.2
0.76	1.25	12.5
0.78	1.29	12.9
0.80	1.32	13.2
0.82	1.35	13.5
0.84	1.38	13.8
0.86	1.41	14.1
0.88	1.44	14.4
0.90	1.48	14.8
0.92	1.51	15.1
0.94	1.54	15.4
0.96	1.57	15.7

**United States Department of Energy  
Alaska Power Administration**

Snettisham Project Alaska

**Schedule of Rates for Interruptible  
Power Service**

*Effective*

May 1, 1995 for a maximum of five years.

*Available*

In the area served by the Snettisham Project, Alaska.

*Applicable*

To wholesale power customers for resale to their residential dual-fuel customers. Availability of energy will be determined by Alaska Power Administration.

*Character and Conditions of Service*

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

*Monthly Rate*

Capacity charge: None.

Energy charge: Variable rate pegged to price of heating oil purchase by the State of Alaska. Refer to Table 1 listing oil prices and comparable wholesale rates.

*Minimum Annual Capacity Charge*

None.

*Billing Demand*

Not applicable.

*Adjustments*

For transformer losses: If delivery is made at the high-voltage side of the

customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

**Table 1**

$$\text{Wholesale rate} = 1.00 + \left( \frac{9 \times \text{OIL} - 1.91}{28.3} - 1.91 \right) \div 2$$

Fuel oil (\$/gal)	Wholesale rate (cents/kwh)	Wholesale rate (mills/kwh)
0.50	0.84	8.4
0.52	0.87	8.7
0.54	0.90	9.0
0.56	0.94	9.4
0.58	0.97	9.7
0.60	1.00	10.0
0.62	1.03	10.3
0.64	1.06	10.6
0.66	1.09	10.9
0.68	1.13	11.3
0.70	1.16	11.6
0.72	1.19	11.9
0.74	1.22	12.2
0.76	1.25	12.5
0.78	1.29	12.9
0.80	1.32	13.2
0.82	1.35	13.5
0.84	1.38	13.8
0.86	1.41	14.1
0.88	1.44	14.4
0.90	1.48	14.8
0.92	1.51	15.1
0.94	1.54	15.4
0.96	1.57	15.7

[Schedule SN-NF-10]

**United States Department of Energy  
Alaska Power Administration**

Snettisham Project, Alaska

**Schedule of Rates for Non-Firm Surplus  
Power Service**

*Effective*

May 1, 1995 for a maximum of five years.

*Available*

In the area served by the Snettisham Project, Alaska.

*Applicable*

To wholesale power customers who have established a rate schedule providing an incentive retail rate for electric heat customers who also have a wood stove, for increased use of energy for each month when compared to the same month in the preceding year. Availability of surplus energy will be determined by Alaska Power Administration.

*Character and Conditions of Service*

Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

*Monthly Rate*

Capacity charge: None.

Energy charge: 21.7 mills per kilowatt-hour.

*Minimum Annual Capacity Charge*

None.

*Billing Demand*

Not applicable.

*Adjustments*

For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

[FR Doc. 95-13682 Filed 6-2-95; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Project No. 3074-006 Washington]

### City of Spokane; WA; Notice of Availability of Environmental Assessment

May 30, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's Regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed the Revised Report on Recreational Resources (revised report), filed May 11, 1990, pursuant to Article 29 of the license for the Upriver Project. The facilities proposed in the revised report are being assessed separately from an amendment proposal to raise the forebay by 1.5 feet, filed September 23, 1993. The proposed recreational facilities will not be impacted by the proposed 1.5-foot rise in the forebay. The additional recreation facilities proposed in the revised report will be constructed on projectlands on the Spokane River in Spokane County, Washington. The recreation facilities proposed consist of: (1) The north side development that includes the licensee's half-mile portion of the constructed Centennial Trail and a constructed river access area located in the immediate area of the Upriver Dam spillway; and (2) the unconstructed southside development that includes a visitor information center, bus parking area, and extensive landscaping next to

the forebay to the powerhouse. The staff prepared an Environmental Assessment (EA) for the action. In the EA, staff concludes that approval of the licensee's revised report would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-13611 Filed 6-2-95; 8:45 am]

BILLING CODE 6717-01-M

### Notice of Intent to Prepare an Environmental Assessment, Conduct Site Visit, Solicit Interventions, Protests, and Written Scoping Comments

May 26, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. Type of Application: Minor License (existing non-operating).
- b. Project No. 11509-000.
- c. Date filed: December 5, 1994.
- d. Applicant: City of Albany, Oregon.
- e. Name of Project: City of Albany Hydroelectric Project.

f. Location: On the South Santiam River and the Albany-Santiam Canal in Linn County, Oregon, in the cities of Albany and Lebanon. T12S,R1W, section 19; T12S,R2W sections 2, 3, 11, 23 and 24; T11S,R3W sections 6, 7, 15, 18, and 20-25; T11S,R2W section 12; T11S,R4W, section 12.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact:

Mark A. Yeager, P.E., Public Works Director, City of Albany, P.O.Box 490, 250 Broadalbin, Albany, OR 97321, (503) 967-4300.

Beverly Bruesch, Project Planner, David Evans and Associates, Inc., 2828 SW Corbett Avenue, Portland, OR 97201-4830, (503) 223-6663.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 219-2842.

j. Deadline for filing protests, motions to intervene and written scoping comments: July 28, 1995.

k. Status of Environmental Analysis: The application is not ready for environmental analysis at this time—see attached paragraph D8.

l. Intent to Prepare an Environmental Assessment and Invitation for Written Scoping Comments: The Commission

staff intends to prepare and Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act. In the EA, we will consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial, and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration by the Commission in reaching its final licensing decision.

### Scoping Meetings

Staff will hold two scoping meetings. A scoping meeting oriented towards the public will be held on Tuesday, June 27, 1995, at 7:00 pm, at the City of Albany, City Hall, 250 Broadalbin, Albany, Oregon. A scoping meeting oriented towards the agencies will be held on Wednesday, June 28, 1995, at 9:30 am, at the Portland Building, 1120 South West 5th Avenue, 2nd floor, Room B, Portland, Oregon.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the Commission mailing list. Copies of the scoping document will also be available at the scoping meetings.

### Site Visit

A site visit to the City of Albany Hydroelectric Project is planned for June 27, 1995. Those who wish to attend should plan to meet at 8:00 am at the City of Albany's Water Treatment Plant at 300 Vine Street SW, Albany, Oregon. If you plan to attend, contact Mr. G. Matthew Reynolds, City of Albany, by June 23, 1995, at (503) 967-4300 for directions or additional details.

### Objectives

At the scoping meetings the staff will: (1) identify preliminary issues related to the proposed project; (2) identify issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the

resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

#### Procedures

The scoping meetings will be recorded by a court reporter and all statements (oral and written) will become a part of the formal record of the Commission's proceedings on the City of Albany Hydroelectric Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, until July 28, 1995.

All written correspondence should clearly show the following caption on the first page: City of Albany Hydroelectric Project, FERC No. 11509-000.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. All entities commenting on this scoping document must file an original and eight copies of the comments with the Secretary of the Commission.

Any questions regarding this notice may be directed to Ms. Deborah Frazier-Stutely, Environmental Coordinator, FERC, at (202) 219-2842.

m. Description of Project: The proposed project would consist of: (1) the existing 6-foot-high, 450-foot-long concrete Lebanon dam, consisting of 3-foot-high flashboards with a crest elevation at 100 feet mean sea level (m.s.l.), to be modified to a fixed crest

dam with a new crest elevation at 101.5 feet m.s.l.; (2) four existing fish ladders, two to be removed, one replaced and one rehabilitated; (3) the existing unscreened canal inlet, to be screened; (4) the existing 18-mile-long, 20-foot-wide trapezoidal Albany-Santiam Canal, about 12 miles of which would be dredged; (5) the two existing concrete penstock intakes with trashracks, wood plank cover and manual slide gates, one to remain closed; (6) the two existing 6-foot-diameter, 55-foot-long steel penstocks, one to remain closed; (7) the existing powerhouse containing two Francis turbines, one to be removed, and one refurbished, two synchronous generators, one to be replaced with an induction generator with an installed capacity of 50 kilowatts and the other to be removed; (8) the existing switchyard, to be upgraded; (9) the existing tailrace discharging project flows into the Calapooia River; (10) the existing 2.4-kilovolt, 300-foot-long transmission line tying into an existing Pacific Power and Light substation; and (11) related facilities.

The project would operate in a run-of-river mode, and the canal, after dredging would have a maximum capacity of 310 cubic feet per second (cfs). Albany proposes to operate the project to maintain a continuous minimum flow of 1,100 cfs in the South Santiam River bypass reach. The proposed project would generate about 3,780,000 kilowatthours of energy annually.

n. Purpose of Project: Project power will be used by the City of Albany.

o. This notice also consists of the following standard paragraphs: A2, A9, B1, D8.

p. Available Locations of Applications: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, N.E., Room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for

preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above

address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 95-13610 Filed 6-2-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-99-007]

**Colorado Interstate Gas Company;  
Notice of Refund Report**

May 30, 1995.

Take notice that on April 12, 1995, Colorado Interstate Gas Company (CIG) filed a refund report in Docket No. RP93-99-007. CIG states that the filing and refunds were made to comply with the Commission's order of November 10, 1994. CIG states that these amounts were paid by CIG on March 13, 1995 and April 7, 1995.

CIG notes that the refund report summarizes transportation and gathering refund amounts for the period October 1, 1993 through September 30 1994 pursuant to Article 3.2 of CIG's Stipulation and Agreement as approved in the Commission's November 10, 1994 Order.

CIG states that copies of CIG's filing have been served on CIG's jurisdictional transportation and gathering customers, interested state commissions, and all parties to the proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 6, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-13612 Filed 6-2-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-91-001]

**Columbia Gas Transmission  
Corporation; Notice of Compliance  
Filing**

May 30, 1995.

Take notice that on May 24, 1995, Columbia Gas Transmission Corporation

(Columbia) tendered for filing the following information.

In compliance with the Commission's letter order of May 19, 1995 in Docket No. RP95-91-000, Columbia states that it has recalculated Appendix B of the Excess Revenue Credit Report to correct an error in its allocation of excess revenue credits.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All protests should be filed on or before June 6, 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 proceedings. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-13613 Filed 6-2-95; 8:45 am]

BILLING CODE 6717-01-M

**Western Area Power Administration**

**Stampede Division, Washoe Project—  
Proposed Nonfirm Power Rate**

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Proposed Stampede Division, Washoe Project Nonfirm Energy Rate Adjustment.

**SUMMARY:** The Western Area Power Administration (Western) is proposing a rate adjustment for nonfirm energy from the Stampede Division, Washoe Project (Stampede). Stampede is located in Sierra County, California. The power repayment study and other analyses indicate that the proposed ceiling rate for nonfirm energy provides sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. Details regarding the proposed rates are outlined in a rate brochure to be provided to all interested parties. Proposed rates for nonfirm energy are scheduled to become effective October 1, 1995.

This notice provides for proposed floor and ceiling rates that are intended to ensure the maximum reasonable annual repayment of the Stampede power investment at marketable rates. The proposed formula for the floor rate will be no less than 85 percent of the then-effective non-time-differentiated rate as provided in Sierra Pacific Power

Company's (SPPC) California Quarterly Short-Term Purchase Price Schedule for As-Available Purchases from Qualifying Facilities with Capacities of 100 kilowatts (kW) or Less (CSPP). This floor rate reflects the rate used to determine a value of an energy exchange account between Western and SPPC for the benefit of project-use facilities. The CSPP is filed with the California Public Utilities Commission (CPUC) on a semi-annual basis. The ceiling rate will be the rate determined by Western to be necessary to repay the Stampede power investment and annual expenses over the remaining repayment period of the power facilities.

Under the proposed rate schedule, Western will conduct a bidding process for the Stampede nonfirm energy that is available after project-use loads have been met, giving priority to preference entities. The nonfirm Stampede energy will be sold to the highest bidder, provided that the bid price is between the proposed floor and ceiling rates.

On June 7, 1991, the Federal Energy Regulatory Commission (FERC) approved the rate procedure for Stampede in Docket No. EF90-5161-000, which expires on September 30, 1995. FERC approved Rate Schedule SNF-3 through September 30, 1994, 55 FERC P61,391. On September 14, 1994, the Deputy Secretary of Energy extended the rate schedule until September 30, 1995 pursuant to Delegation Order No. 0204-108, 59 FR 488875. This rate procedure established an annual bidding process for the sale of Stampede nonfirm energy. The nonfirm energy would be sold to the entity offering the highest price, provided that the bid price is between the floor and ceiling rates established by Western. Since 1991, Western has not received a bid for Stampede energy that fully complied with the FERC-approved bidding procedure. As a result, Western has been able to market Stampede nonfirm energy only under short-term agreements. In addition, prior to 1994, Western could not provide Stampede power to project-use loads, as announced in the **Federal Register** (50 FR 21350) on May 23, 1985. To serve project-use loads and market Stampede nonfirm energy, Western negotiated an agreement in 1994 with SPPC that provides for an annual energy exchange account for Stampede energy. As members of the Western Systems Power Pool (WSPP), Western and SPPC agreed that SPPC would accept delivery of all energy generated by Stampede into its electrical system. The dollar value of the Stampede energy received by SPPC during any month will be credited into the Stampede Energy Exchange Account

(SEEA). Western can utilize the SEEA to benefit project use facilities, market Stampede nonfirm energy to preference entities over the SPPC transmission system at mutually agreed points of

delivery, or sell a portion of the Stampede energy to SPPC. So long as there is a balance in the SEEA, Western may direct SPPC to do any combination of the above transactions in any month.

The existing and proposed floor and ceiling rates for Stampede nonfirm energy are shown in the table below:

PERCENTAGE CHANGE IN NONFIRM ENERGY RATE

Nonfirm energy rate	Existing rates as of July 1, 1994	Proposed rates October 1, 1995	Percent change
Floor rate (mills/kWh) .....	27.69	See formula .....	N/A
Ceiling rate (mills/kWh) .....	67.39	72.307 .....	7

Stampede is a power system which normally has annual sales less than 100 million kWh and an installed capacity of less than 20,000 kilowatt; therefore, the proposed rates constitute a minor rate adjustment as defined by the procedures for public participation in rate adjustments, as cited below. Since this is a minor rate adjustment, no public meetings are scheduled; however, Western will accept comments from interested parties. After review of public comments, Western will recommend proposed rates for approval on an interim basis by the Deputy Secretary of the Department of Energy (DOE).

**DATES:** The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end July 5, 1995.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

**FOR FURTHER INFORMATION CONTACT:** James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825-1097, (916) 649-4418.

**SUPPLEMENTARY INFORMATION:** Nonfirm energy rates for Stampede are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), and acts amendatory or supplementary to the foregoing acts, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of August 1, 1956, 70 Stat. 775.

By Amendment No. 3 to Delegation Order No. 0204-108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect

on an interim basis to the Deputy Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in rate adjustments (10 CFR Part 903) became effective on September 18, 1985.

**Availability of Information**

The rate brochure, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed rates for Stampede nonfirm energy are available for inspection and copying at Western's Sacramento Area Office, located at 1825 Bell Street, Suite 105, Sacramento, CA 95825-1097.

**Regulatory Flexibility Analysis**

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the Stampede nonfirm energy rate adjustment is related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the nonfirm energy rates are of limited applicability, no flexibility analysis is required.

**Determination Under Executive Order 12866**

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

**Environmental Evaluation**

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Parts 1500-1508); and DOE NEPA Regulations (10 CFR Part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental impact assessment or an environmental impact statement. A categorical exclusion was issued on April 15, 1995.

Issued in Golden, Colorado, May 10, 1995.

**J.M. Shafer,**

*Administrator.*

[FR Doc. 95-13680 Filed 6-2-95; 8:45 am]

BILLING CODE 6450-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-5215-2]

**Agency Information Collection Activities Under OMB Review**

**AGENCY:** Environmental Protection agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202) 260-2740, please refer to ICR #193.05.

**SUPPLEMENTARY INFORMATION:**

**Office of Air and Radiation**

*Title:* National Emission Standard for Hazardous Air Pollutants (NESHAP) for

Beryllium (Subpart C)—Information Requirements (EPA ICR No. 193.05, OMB No. 2060-0092.)

*Abstract:* This ICR is for an extension of an existing information collection in support of NESHAP requirements as established by the Clean Air Act. Specifically, under 40 CFR 61.07-61.13 and 40 CFR 61.30-61.34, owners or operators of sources subject to the NESHAP for beryllium must demonstrate compliance through either an initial test of stack emissions, or ambient air monitoring (unless a waiver of emission testing is obtained under 40 CFR 61.13). The information collected will be used by the EPA for monitoring, inspection, and enforcement efforts directed at ensuring source compliance with the NESHAP.

Prior to commencement of operations, owners or operators of new sources subject to this NESHAP must submit an application for approval of construction that includes: (1) The name and address of the applicant, (2) the location or proposed location of the source, and (3) technical information describing the source. Once approved, the owners or operators must notify EPA of the anticipated and actual start-up dates at the source.

Owners and operators of new and existing sources conducting an initial emission test must: (1) Notify EPA at least 30 days prior to the date of the test, and (2) record and report the test results to EPA.

Owners and operators of all existing facilities must report all calculations estimating new emission levels whenever a change in plant operations or modifications might elevate emission levels.

While owners or operators of new sources must conduct an initial emission test, owners or operators of existing sources may, as an alternative, seek approval from the EPA to conduct continuous compliance monitoring. Owners or operators of existing sources seeking EPA approval to perform continuous ambient air monitoring must submit a report that includes: (1) A description of the locations and physical characteristics of the sampling area, (2) the design, methods, and techniques used in sampling and estimating emissions, (3) a description of the process used to design the air sampling network, and (4) three years of air quality monitoring data. If the request is granted, the owner or operator must submit a monthly report on beryllium concentrations measured at all sampling sites.

All sources must maintain records on: (1) Emission test results and other data used to determine emissions, (2) control

equipment parameters, production variables or other indirect data. Sources that have chosen to continuously monitor ambient air concentrations must: (1) Record ambient concentrations at all sampling sites from the continuous monitoring system.

Presently, only about 24 sources, out of an estimated 236 subject to this NESHAP, conduct continuous compliance monitoring. The EPA does not anticipate any expansion in the regulated community over the next three years. Owners and operators of subject sources must maintain records related to compliance for a two year period.

*Burden Statement:* Public reporting burden for this collection of information is estimated to average 8 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information.

*Respondents:* Businesses or other for-profit organizations.

*Estimated Number of Respondents:* 24.

*Estimated Number of Responses per Respondent:* 12.

*Estimated Total Annual Burden on Respondents:* 2,235 hours.

*Frequency of Collection:* Monthly for ambient monitoring, on occasion for initial emission testing.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, EPA #193.05, U.S.

Environmental Protection Agency,  
Regulatory Information Division, 401  
M Street, SW., Washington, DC 20460  
and

Chris Wolz, OMB #2060-0092, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: May 25, 1995.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 95-13673 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5215-3]

#### **Agency Information Collection Activities Under OMB Review**

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C.

3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer (202) 260-2740, Please refer to the EPA ICR No.

#### **SUPPLEMENTARY INFORMATION:**

#### **OMB Responses to Agency PRA Clearance Requests**

##### *OMB Approvals*

EPA ICR No. 1633.07; Technical Amendments for Continuous Emissions Monitoring, Acid Rain Program; was approved 04/28/95; OMB No. 2060-0258; expires 01/31/96.

EPA ICR No. 1058.05; NSPS (Subpart E) for Municipal Incinerators; was approved 03/28/95; OMB No. 2060-0040; expires 03/31/98.

##### *OMB's Extensions of Expiration Dates*

EPA ICR No. 1189.04; Identification, Listing and Rulemaking Petitions; OMB No. 2050-0053; expiration date extended to 07/31/95.

EPA ICR No. 0167.04; Verification of Test Parameters and Parts Lists for Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines; OMB No. 2060-0094; expiration date was extended to 10/31/95.

EPA ICR No. 0783.32; Application for Motor Vehicle Emission Certification and Fuel Economy Labeling, Small Nonroad Engines (Proposed Rule); OMB No. 2060-0104; expiration date was extended to 09/30/95.

EPA ICR No. 1051.05; NSPS for Portland Cement Plant Monitoring Provisions; OMB No. 2060-0025; expiration date was extended to 08/31/95.

EPA ICR No. 0193.04; NESHAP for Beryllium (Subpart C)—Information Requirements; OMB No. 2060-0092; expiration date was extended to 08/31/95.

EPA ICR No. 0827.03; Construction Grants Program Information Collection Request; OMB No. 2040-0027; expiration date was extended to 09/30/95.

EPA ICR No. 1584.06; Acid Rain Program (Title IV of the Clean Air Act Amendments of 1990); OMB No. 2060-0221; expiration date was extended to 09/30/95.

EPA ICR No. 1062.04; NSPS for Coal Preparation Plants (Subpart Y); OMB No. 2060-0122; expiration date was extended to 09/30/95.

EPA ICR No. 1367.03; Gasoline Volatility Enforcement; OMB No. 2060-0178; expiration date was extended to 08/30/95.

EPA ICR No. 1084.03; NSPS for Nonmetallic Mineral Processing Plants—Reporting and Recordkeeping—40 CFR Subpart 000; OMB No. 2060-0050; expiration date was extended to 08/30/95.

EPA ICR No. 1050.04; Standards of Performance for New Stationary Sources Vessels for Petroleum Liquids—Subpart KA; OMB No. 2060-0121; expiration date was extended to 08/31/95.

#### *EPA Withdrawal*

EPA ICR No. 1728.01; Municipal Water Pollution Prevention Program Evaluation (Self Audit); was withdrawn from OMB's review 04/21/95.

Dated: May 25, 1995.

#### **Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 95-13670 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5215-4]

#### **Agency Information Collection Activities Under OMB Review**

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before July 5, 1995.

**FOR FURTHER INFORMATION:** For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740, please refer to EPA ICR No. 0657.05.

#### **SUPPLEMENTARY INFORMATION:**

##### **Office of Air and Radiation**

*Title:* Reporting and Recordkeeping Requirements for the New Source Performance Standards, (NSPS) Subpart QQ for the Graphics Arts Industry—Publication Rotogravure Printing (ICR No. 0657.05; OMB No. 2060-0105).

*Abstract:* This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7-60.8 and the specific NSPS, for volatile organic compound (VOC) emissions from the Graphic Arts Industry, at 40 CFR 60.430-60.435. The information will be used by EPA to

direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Owners and operators of affected facilities must provide EPA with: (1) Notification of construction, reconstruction, or modification; (2) anticipated and actual dates of facility startup; (3) initial performance test data, date and results; and (4) notification of any physical or operational change to an existing facility which could increase the VOC emission rate.

All affected facilities must maintain records on the facility operation that document: (1) Occurrence and duration of any start-ups, shutdowns, and malfunction; (2) amount of volatile solvent used and the amount recovered; (3) percentage of volatile solvent emitted over each performance period (4 weeks or one month); (4) amount of water used; (5) periods when the monitoring system was inoperative and (6) initial performance test results.

Presently there are approximately 165 sources at 17 respondent facilities, subject to the regulation. All subject facilities must maintain records related to compliance for two years.

*Burden Statement:* Public reporting burden for facilities subject to this collection of information is estimated to average 328 hours annually.

*Respondents:* Owners or operators of subject rotogravure printing facilities which commenced construction, reconstruction, or modification after October 28, 1980.

*Estimated Number of Respondents:* 17.

*Estimated Number of Respondents per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 5577 hours.

*Frequency of Collection:* One-time notifications for new facilities; occasional reporting, as appropriate, for existing facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, (please refer to EPA ICR #657.04 and OMB #2060-0105) to:

Sandy Farmer, EPA ICR #657.04, U.S. Environmental Protection Agency, Regulatory Information Division, 401 M Street, SW., Washington, DC 20460 and

Chris Wolz, OMB #2060-0105, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: May 25, 1995.

#### **Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 95-13674 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5215-5]

#### **Agency Information Collection Under OMB Review**

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202) 260-2740, (please refer to EPA ICR #783.33 and OMB #2060-0104.)

#### **SUPPLEMENTARY INFORMATION:**

##### **Office of Air and Radiation**

*Title:* Application for Motor Vehicle Emission Certification and Fuel Economy Labeling (EPA ICR #783.33; OMB #2060-0104). This ICR requests renewal of an existing clearance.

*Abstract:* Motor vehicle and motor vehicle engine manufacturers maintain records and submit detailed reports to EPA describing their planned product line with a description of emission control systems, and test data organized by "engine family" groups expected to have similar emissions and "model types" with similar fuel economy. Manufacturers must maintain records on information submitted to EPA. The EPA, the IRS and the DOT use the information to verify compliance with the Clean Air Act, gas guzzler taxes in the Omnibus Reconciliation Act, 1990, and Corporate Average Fuel Economy Standards respectively. State and local governments also use the information in their inspection/maintenance programs. More specifically, the EPA uses the information to issue certificates of conformity and fuel economy labels, to determine that manufacturers conducted appropriate tests and verify that vehicles comply with prescribed emission standards.

*Burden Statement:* The public reporting burden for this collection of information is estimated to average

16,010 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. In addition, each respondent will spend an estimated 4981 hours per year conducting tests and 1522 hours per year maintaining records required for reporting and enforcement.

*Respondents:* Manufacturers of motor vehicles and motor vehicle engines.

*Estimated Number of Respondents:* 68.

*Estimated Total Annual Burden on Respondents:* 1,530,900 hours.

*Frequency of Collection:* Annually.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing burden, (please refer to EPA ICR #783.33 and OMB #2060-0104) to:

Sandy Farmer, EPA ICR #783.33, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M St., SW., Washington, DC 20460  
and

Tim Hunt, OMB #2060-0104, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20530.

Dated: May 25, 1995.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 95-13675 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5215-7]

### Agency Information Collection Activities Under OMB Review

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Sandy Farmer at EPA, (202) 260-2740, please refer to EPA ICR #1170.05.

**SUPPLEMENTARY INFORMATION:**

### Office of Prevention, Pesticides, and Toxic Substances

*Title:* Collection of Economic and Program Support Data: Request for generic Clearance. (EPA ICR No.: 1170.05; OMB No.: 2070-0034). This is a request for an extension of the expiration date of a currently approved collection.

*Abstract:* The Toxic Substances Control Act (TSCA) requires the EPA Administrator to consider the economic impacts of actions taken to control the manufacture, distribution, processing, use, or disposal of a chemical substance or mixture that presents an unreasonable risk of injury to human health or the environment. On occasion, EPA conducts surveys requesting that chemical companies voluntarily provide certain economic and regulatory impact data to the Agency. EPA uses this information to determine the potential consequences on the industry of the regulatory actions under consideration by the Agency.

*Burden Statement:* The burden for this collection of information is estimated to average 1.5 hour per response annually. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

*Respondents:* Chemical manufacturers.

*Estimated No. of Respondents:* 4,000.

*Estimated No. of Responses per Respondent:* 1.

*Estimated Total Annual burden on Respondents:* 6,000 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, (please refer to EPA ICR #1170.05 and OMB #2070-0034) to:

Sandy Farmer, EPA ICR #1070.05, U.S. Environmental Protection Agency, Regulatory Information Division—2136, 401 M Street, SW., Washington, DC 20460  
and

Tim hunt, OMB # 2070-0034, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: May 25, 1995.

**Joe Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 95-13672 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5208-3]

### Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent to Certify Equipment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

**SUMMARY:** The Agency has received a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, Subpart O. Pursuant to § 85.1407(a)(7), today's **Federal Register** notice summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review this notification of intent to certify, as well as comments received, to determine whether the equipment described in the notification of intent to certify should be certified. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The Detroit Diesel Corporation (DDC) notification of intent to certify, as well as other materials specifically relevant to it, are contained in category VII-A of Public Docket A-93-42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment". This docket is located at the address below.

Today's notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment included in this notification of intent to certify should be certified. Comments should be provided in writing to Public Docket A-93-42, Category VII-A, at the address below. An identical copy should be submitted to William Rutledge, also at the address below.

**DATES:** Comments must be submitted on or before July 20, 1995.

**ADDRESSES:** Submit separate copies of comments to each of the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A-93-42 (Category VII-A), Room M-1500, 401 M Street S.W., Washington, DC 20460.

2. William Rutledge, Technical Support Branch, Manufacturers Operations Division (6405J), 401 "M" Street S.W., Washington, DC 20460.

The DDC notification of intent to certify, as well as other materials specifically relevant to it, are contained in the public docket indicated above.

Docket items may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** William Rutledge, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. Telephone: (202) 233-9297.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance options: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

A key aspect of the program is the certification of retrofit/rebuild equipment. To meet either of the two compliance options, operators of the affected buses must use equipment which has been certified by the Agency. Emissions requirements under either of the two compliance options depend on the availability of retrofit/rebuild equipment certified for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of \$7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of \$2,000 or less for the 25

percent or greater reduction in PM. Both of these values are based on 1992 dollars.

**II. Notification of Intent to Certify**

By a notification of intent to certify signed March 16, 1995, and with cover letter dated April 11, 1995, Detroit Diesel Corporation (DDC) has applied for certification of equipment applicable to its 6V92TA model engines having mechanical unit injectors (MUI) that were originally manufactured between January 1979 and December 1989. The notification of intent to certify states that the candidate equipment will reduce PM emissions 25 percent or more, on petroleum-fueled diesel engines that have been rebuilt to DDC specifications. Further, transit pricing level has been submitted with the notification, along with a guarantee that the equipment will be offered to all affected operators for less than the incremental life cycle cost ceiling. Therefore, this equipment may trigger program requirements for the 25% reduction standard. If certified as a trigger of this standard, urban bus operators will be required to use this retrofit/rebuild equipment or other equipment certified to provide a PM reduction as discussed below.

All components of the candidate equipment are contained in two basic types of kits. One of each basic type of kit is required for the rebuild of an engine. Twelve combinations of the two basic types of kits are relevant to certification—the specific combination to be used with a particular engine depends upon engine rotation direction, orientation of the engine block, cam gear mounting technique, and engine power level. One basic type of kit includes a gasket kit, air inlet hose, cylinder kit, and by-pass valve assembly. The other basic type of kit includes fuel injectors, camshafts, blower assembly, turbocharger, and head assemblies. Further, engines of model year 1979 through 1987 would receive an injector timing dimension that is different than that for the 1988 and 1989 engines.

DDC presents exhaust emission data from testing the candidate equipment on an engine rebuilt to a configuration identical to a 1979 model year DDC 6V92TA urban bus engine. This engine was selected to represent a "worst case", with respect to PM, of the engines for which certification of the equipment is being sought. A baseline test was conducted after the engine was rebuilt to the original 1979 urban bus configuration. Subsequent testing was done after again rebuilding using the candidate equipment: One test was conducted using the injector timing

dimension for the 1988 and 1989 engines, and another test was conducted using the dimension for the 1979 through 1987 engines. The test data indicate, with the candidate equipment installed, 52 percent reduction in PM level for 1979 through 1987 model year engines (to a level of 0.26 g/bhp-hr), and 25 percent reduction for 1988 and 1989 engines (to a level of 0.23 g/bhp-hr). (Model years 1988 and 1989 of this engine family were certified under EPA's new engine certification program to a PM level of 0.31 g/bhp-hr.) The test data also indicate that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO<sub>x</sub>) are less than applicable standards. Fuel consumption is reduced with the candidate equipment installed. DDC presents smoke emission measurements for the engine which indicate compliance with applicable standards.

DDC states that the candidate equipment will be offered to all affected operators for less than a life cycle cost of \$2,000 (1992 dollars), and has submitted life cycle cost information. This information may trigger the 25 percent reduction standard if the equipment is certified. DDC indicates that the candidate equipment has no incremental purchase price, installation cost, fuel cost, or maintenance cost compared to the currently available standard rebuild.

If the Agency certifies the candidate DDC equipment as a trigger of program requirements, operators will be affected as follows. Under Program 1, all rebuilds of applicable engines performed 6 months following the effective date of certification, must use the DDC equipment or other equipment certified to prove at least a 25 percent reduction. This requirement would continue for the applicable engines until such time that equipment was certified to trigger the 0.10 g/bhp-hr emission standard for less than a life cycle cost of \$7,940 (in 1992 dollars). If the Agency certifies the candidate DDC equipment as a trigger of program requirements, operators who choose to comply with Program 2 and install this equipment, will use the PM emission level(s) established during the certification review process, in their calculations for target or fleet level as specified in the program regulations. DDC projects a post-rebuild PM level of 0.26 g/bhp-hr with the equipment installed on model year 1979 through 1987 6V92TA MUI engines, and 0.23 g/bhp-hr for 6V92TA MUI engines of model years 1988 and 1989.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as

applicable, to determine whether there is adequate demonstration of compliance with: (1) the certification requirements of § 85.1406, including whether the testing accurately substantiates the claimed emission reduction or emission levels; and, (2) the requirements of § 85.1407 for a notification of intent to certify, including whether the data provided by DDC complies with the life cycle cost requirements.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45 day period during which the Agency will accept written comments relevant to whether or not the equipment described in the DDC notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: May 10, 1995.

**Mary D. Nichols,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 95-13540 Filed 6-1-95; 8:45 am]

BILLING CODE 6560-50-P-M

[FRL-5215-9]

**Notice of Final Decision To Grant Chemical Waste Management, Inc. a Modification of an Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 Regarding Injection of Hazardous Wastes**

AGENCY: United States Environmental Protection Agency.

**ACTION:** Notice of Final Decision on a Request to Modify an Exemption from the Hazardous and Solid Waste Amendments of the Resource Conservation and Recovery Act (RCRA).

**SUMMARY:** Notice is hereby given by the United States Environmental Protection Agency (USEPA or Agency) that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to RCRA has been granted to Chemical Waste Management, Inc. (CWM) of Oakbrook, Illinois. As required by Title 40 of the Code of Federal Regulations (40 CFR part 148), CWM has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the injection zone utilized by CWM's waste disposal facility located near Vickery, Ohio, for as long as the waste remains hazardous. This modification allows CWM to inject additional RCRA-regulated hazardous wastes, identified by codes F037, F038, K086, K107, K108, K109, K110, K123, K124, K125, K126, K131, K132, K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 through four waste disposal wells (WDWs) at the facility at Vickery, Ohio. This decision constitutes a final Agency action for which there is no administrative appeal.

**Background**

CWM submitted a petition for an exemption from the restrictions on land disposal of hazardous wastes on January 19, 1988. Revised documents were received on December 4, 1989, and several supplemental submittals were subsequently made. The exemption was granted on August 7, 1990. On September 12, 1994, and October 28, 1994, CWM submitted a petition to modify the exemption to include wastes bearing 23 additional wastes codes.

After careful review of the material submitted, the USEPA has determined, as required by 40 CFR 148.20(f), that there is a reasonable degree of certainty that waste streams containing constituents designated by these codes will behave hydraulically and chemically like wastes for which CWM was granted an exemption, and will not migrate from the injection zone within 10,000 years. The injection zone is the Mt. Simon Sandstone and the Rome, Conasauga, Kerbel, and Knox Formations. The confining zone is comprised of the Wells Creek and Black River Formations. A fact sheet

containing a summary of the decision now being modified was published in the **Federal Register** on June 18, 1990, at 55 FR 24629 et seq. The proposed decision for this modification was published in the **Federal Register** on February 14, 1995, at 60 FR 8378 et seq.

A public notice of the proposed decision was issued on February 14, 1995, and a public hearing was held in Fremont, Ohio, on March 16, 1995. The public comment period expired on March 31, 1995. A number of comments were received and all comments have been considered in reaching this final decision. A responsiveness summary has been mailed to all commentors and included as part of the Administrative Record relating to this decision.

As a result of this action, CWM may inject the wastes bearing the RCRA codes: F037, F038, K086, K107, K108, K109, K110, K123, K124, K125, K126, K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151 in addition to wastes designated by the codes listed in the fact sheet for this decision. CWM may continue to inject wastes designated as K131 and K132 after they are banned from land disposal on June 30, 1995.

**Errata**

Several errors were made in compiling the list of waste codes which are covered in the original exemption. Following are corrections:

Waste codes K100, K117, K118, and P110 were inadvertently omitted. CWM's existing exemption includes these waste codes.

The listing included U013 and U175 in error; there are currently no such waste codes, and, should such codes be used to designate wastes in the future, CWM may not inject those wastes unless they can be shown to behave similarly to previously exempted wastes and the CWM exemption is modified to include them.

The duplication of U003 was inadvertent and the second occurrence has no significance.

'T's were used instead of '1's in U150, U176, and U178. These codes should have been written using '1's.

A full list of all the RCRA waste codes for which CWM has been granted exemption follows:

BILLING CODE 6560-50-P

## List of Approved RCRA Waste Codes for Injection:

## LIST OF APPROVED RCRA WASTE CODES FOR INJECTION:

D001	K023	K107	P029	P096	U031	U089	U146	U205
D002	K024	K108	P030	P097	U032	U090	U147	U206
D003	K025	K109	P031	P098	U033	U091	U148	U207
D004	K026	K110	P033	P099	U034	U092	U149	U208
D005	K027	K111	P034	P101	U035	U093	U150	U209
D006	K028	K112	P036	P102	U036	U094	U151	U210
D007	K029	K113	P037	P103	U037	U095	U152	U211
D008	K030	K114	P038	P104	U038	U096	U153	U213
D009	K031	K115	P039	P105	U039	U097	U154	U214
D010	K032	K116	P040	P106	U041	U098	U155	U215
D011	K033	K117	P041	P107	U042	U099	U156	U216
D012	K034	K118	P042	P108	U043	U101	U157	U217
D013	K035	K123	P043	P109	U044	U102	U158	U218
D014	K036	K124	P044	P110	U045	U103	U159	U219
D015	K037	K125	P045	P111	U046	U105	U160	U220
D016	K038	K126	P046	P112	U047	U106	U161	U221
D017	K039	K131	P047	P113	U048	U107	U162	U222
F001	K040	K132	P048	P114	U049	U108	U163	U223
F002	K041	K136	P049	P115	U050	U109	U164	U225
F003	K042	K141	P050	P116	U051	U110	U165	U226
F004	K043	K142	P051	P118	U052	U111	U166	U227
F005	K044	K143	P054	P119	U053	U112	U167	U228
F006	K045	K144	P056	P120	U055	U113	U168	U234
F007	K046	K145	P057	P121	U056	U114	U169	U235
F008	K047	K147	P058	P122	U057	U115	U170	U236
F009	K048	K148	P059	P123	U058	U116	U171	U237
F010	K049	K149	P060	U001	U059	U117	U172	U238
F011	K050	K150	P062	U002	U060	U118	U173	U239
F012	K051	K151	P063	U003	U061	U119	U174	U240
F019	K052	P001	P064	U004	U062	U120	U176	U243
F024	K060	P002	P065	U005	U063	U121	U177	U244
F037	K061	P003	P066	U006	U064	U122	U178	U246
F038	K062	P004	P067	U007	U066	U123	U179	U247
F039	K069	P005	P068	U008	U067	U124	U180	U248
K001	K071	P006	P069	U009	U068	U125	U181	U249
K002	K073	P007	P070	U010	U069	U126	U182	U328
K003	K083	P008	P071	U011	U070	U127	U183	U353
K004	K084	P009	P072	U012	U071	U128	U184	U359
K005	K085	P010	P073	U014	U072	U129	U185	
K006	K086	P011	P074	U015	U073	U130	U186	
K007	K087	P012	P075	U016	U074	U131	U187	
K008	K093	P013	P076	U017	U075	U132	U188	
K009	K094	P014	P077	U018	U076	U133	U189	
K010	K095	P015	P078	U019	U077	U134	U190	
K011	K096	P016	P081	U020	U078	U135	U191	
K013	K097	P017	P082	U021	U079	U136	U192	
K014	K098	P018	P084	U022	U080	U137	U193	
K015	K099	P020	P085	U023	U081	U138	U194	
K016	K100	P021	P087	U024	U082	U139	U196	
K017	K101	P022	P088	U025	U083	U140	U197	
K018	K102	P023	P089	U026	U084	U141	U200	
K019	K103	P024	P092	U027	U085	U142	U201	
K020	K104	P026	P093	U028	U086	U143	U202	
K021	K105	P027	P094	U029	U087	U144	U203	
K022	K106	P028	P095	U030	U088	U145	U204	

**Conditions**

General conditions of this exemption are found at 40 CFR part 148. The exemption granted to CWM on August 7, 1990 included a number of conditions. Conditions numbered (1), (2), (3), (4), and (9) remain in force. Monitoring under condition 5, which called for construction and operation of a deep monitoring well, will continue through the life of the facility. Conditions numbered (5), (6), (7), and (8) have been satisfied.

**DATES:** This action is effective as of May 16, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Harlan Gerrish or Nathan Wiser, Lead Petition Reviewers, USEPA, Region 5, telephone numbers (312) 886-2939 and (312) 353-9569, respectively. Copies of the petition and all pertinent information relating thereto are on file and are part of the Administrative Record. It is recommended that you contact the lead reviewers prior to reviewing the Administrative record.

**Edward P. Watters,**

*Acting Director, Water Division.*

[FR Doc. 95-13676 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5215-7]

**Availability of Draft Proposed Compliance Agreement Between Environmental Protection Agency and Department of Energy Related to Noncompliance of the Los Alamos National Laboratory With National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart H (Radionuclides); and Notice of Public Information Meetings**

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

**ACTION:** Notice of availability of draft proposed compliance agreement and notice of public information meetings.

**SUMMARY:** The Environmental Protection Agency is hereby giving notice of availability for public review and comment, a draft Federal Facility Compliance Agreement (FFCA) between the Environmental Protection Agency (EPA) and the Department of Energy (DOE), in the matter of the DOE's Los Alamos National Laboratory, Los Alamos, New Mexico. The draft FFCA has been negotiated pursuant to the Clean Air Act, 42 U.S.C. 7401, et seq., and Executive Order 12088, October 13, 1978, (43 FR 47707). The FFCA will resolve violations of the National Emission Standards for Hazardous Air Pollutants relating to Emissions of Radionuclides Other Than Radon From

Department of Energy Facilities (NESHAP), 40 CFR part 61, subpart H, set forth in Notices of Noncompliance issued by EPA to DOE effective November 27, 1991, and November 23, 1992. The draft FFCA incorporates (at Appendix A) a Compliance Plan which requires DOE to upgrade the facility and operations to achieve full compliance with NESHAP Subpart H. EPA seeks comment on the draft FFCA within 60 days of the date of publication of this notice. Single copies of the draft FFCA may be obtained on request, or the draft FFCA may be examined at any of the locations listed below (see ADDRESSES). Single copies of the draft FFCA are available on request from Mr. Hank May, U.S. Environmental Protection Agency (6T-E), 1445 Ross Avenue, Dallas, Texas 75202-2733. The request may be made via facsimile at (214) 665-2164, or by calling a 24-hour message system at (214) 665-7225. If request is made on 24-hour telephone message system or by facsimile, message will be acknowledged promptly and the draft FFCA mailed as soon as possible. On request, the draft FFCA will be sent instead on PC disk in WordPerfect 5.1.

Three informational meetings will be held early in the 60-day comment period, and will be open to the public. The purpose of these meetings is not to receive comments on the FFCA, but rather to explain the background and basis of the FFCA to those interested, and answer questions related to the FFCA. Meetings will be held in Los Alamos, NM at the Fuller Lodge, 2132 Central Avenue (at 20th Street) from 7 p.m. to 10 p.m. on June 27, 1995; in Española at the Española National Guard Building, West Fairview Lane (2.3 miles west of U.S. Highway 285) from 7 p.m. to 10 p.m. on June 28, 1995; and in Santa Fe at the auditorium in the Runnels Building, New Mexico Department of Environment, 1190 St. Francis Drive from 7:00 p.m. to 10:00 p.m. on June 29, 1995. All meetings will be conducted in English, but a Spanish translator will be available to assist with questions and answers. Facilities will not be available to receive comments, and it is emphasized that *comments on the draft FFCA cannot be received at these informational meetings.*

**DATES:** Comments on the draft FFCA must be received in writing by no later than August 4, 1995.

**ADDRESSES:** Written comments on the draft FFCA should be submitted in writing to Mr. Samuel Coleman, Director Air, Pesticides and Toxics Division (6T), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, TX 75202-2733.

A copy of the draft FFCA is available for inspection at the following locations: Albuquerque Public Library, 501 Copper Avenue NW, Albuquerque, New Mexico.

Santa Fe Public Library, 145 Washington Avenue, Santa Fe, New Mexico.

Los Alamos DOE Community Reading Room, 1350 Central Avenue, Suite 101, Los Alamos, New Mexico; also in Los Alamos at the Mesa Public Library, 2400 Central Avenue, Los Alamos, New Mexico.

Española Public Library, 314 Onate, Española, New Mexico.

EPA Library, 401 "M" Street, SW. (West Tower, Room 2904), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hank May, Air Enforcement Branch (6T-E), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7297.

Dated: May 26, 1995.

**Samuel Coleman,**

*Director, Air, Pesticides and Toxics Division (6T), EPA Region 6.*

[FR Doc. 95-13668 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5214-9]

**Common Sense Initiatives Council (CSIC)**

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

**ACTION:** Notification of Public Advisory CSI Printing and Iron and Steel Sector Subcommittee Meetings; Open Meetings.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Printing and Iron and Steel Sector Subcommittees of the Common Sense Initiative Council (CSIC) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public. Seating at meetings will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed with the two Sector Subcommittee announcements below.

**(1) Printing Sector Subcommittee—June 21, 1995**

The Common Sense Initiative Council, Printing Sector Subcommittee (CSIC-PSS) is convening an open meeting on June 21, 1995 from 8:30 am to 3:30 pm. The workgroups will meet the day before on June 20, 1995 from approximately 10:00 am until about 5:30

pm. The meetings will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202-3564. The phone number of the hotel is 703-413-5500.

The purpose of the Subcommittee meeting is to discuss the projects under consideration by the Subcommittee and the Subcommittee workplan. The purpose of the workgroup meetings the day before is to further develop the workplan for these projects. Agendas will be available June 13, 1995.

Limited time will be provided for members of the public wishing to make an oral presentation or comments at the Subcommittee meeting.

For further information, contact Ginger Gotliffe of EPA's Office of Enforcement and Compliance Assurance at 202-564-7072, or Nancy Cichowicz of EPA's Region III at 215-597-2030.

## (2) Iron and Steel Sector Subcommittee—June 29, 1995

The Common Sense Initiative Council, Iron and Steel Sector Subcommittee (CSIC-ISS) is holding an open meeting on Thursday, June 29, 1995 from 9:00 a.m. to 5:00 p.m. at the Westin William Penn Hotel, 530 William Penn Place, Pittsburgh, PA 15219, telephone number 412-281-7100.

The Iron and Steel Subcommittee has created four workgroups which are responsible for proposing to the full Subcommittee for its review and approval potential activities or projects that the Iron and Steel Sector Subcommittee will undertake, and for carrying out projects once approved. The Subcommittee has approved four projects and their workplans and two project concepts for which workplans are being developed for review and discussion. Two additional projects are being considered by the Subcommittee. Workgroups will be meeting on Wednesday preceding the meeting to discuss further these projects and continue working on workplans. The purpose of the Subcommittee meeting will for be the four workgroups to report on the progress they have made, and for the Subcommittee to review and discuss the workplan activities, to provide further guidance as necessary, to approve any proposed changes or additional projects, and to make remaining implementation decisions.

For more information about the Iron and Steel Sector Subcommittee meeting, please call either Ms. Mary Byrne at 312-353-2315 in Chicago, Illinois or Ms. Judith Hecht at 202-260-5680 in Washington, DC.

## Further Information and Inspection of CSIC Documents

Documents relating to the above Sector Subcommittee announcements will be publicly available at the meetings. Thereafter, these documents, together with official minutes for the meetings, will be available for public inspection in room 2417 Mall of EPA Headquarters, Common Sense Initiative Program Staff, 401 M Street, SW., Washington, DC 20460, phone (202) 260-7417. CSIC information can be accessed electronically through contacting Katherine Brown at: brown.katherine@epamail.epa.gov.

Dated: May 31, 1995.

**Vivian Daub,**

*Designated Federal Officer.*

[FR Doc. 95-13671 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5215-8]

## Notice of Closed Meeting of the Ad Hoc Environmental Education and Training Subcommittee of the National Environmental Education Advisory Council

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 meeting:

Date: June 20, 1995.

Time: 9:00 am-5:00 pm.

Place: U.S. EPA.

Contact: Kathleen MacKinnon, U.S. EPA, Environmental Education Division (1707), 401 M Street, SW., Washington, DC 20460, 202-260-4951.

Purpose/Agenda: To review and evaluate proposals to operate the Environmental Education and Training Program.

The meeting will be closed in accordance with the provisions set forth in Section 552b(c)(4) and (6) of Title 5 U.S.C. Discussions about the proposals could disclose privileged or confidential trade secrets and commercial or financial information as well as information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: May 12, 1995.

**Loretta M. Ucelli,**

*Associate Administrator, Office of Communications, Education, and Public Affairs.*

[FR Doc. 95-13669 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5216-2]

## Land Use Directive

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Availability of "Land Use in the CERCLA Remedy Selection Process."

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) has issued a directive entitled "Land Use in the CERCLA Remedy Selection Process" (OSWER Directive Number 9355.7-04). This directive outlines guidelines to consider when developing "reasonably anticipated" future land uses in the CERCLA remedy selection process. It recommends early community involvement, which EPA believes should result in a more participatory and better informed decisionmaking process; greater community support for remedies selected as a result of this process; and more expedited cleanups.

**ADDRESSES:** To obtain a copy of this land use directive contact the National Technical Information Service (NTIS) at (703) 487-4650 and request "Considering Land Use in the CERCLA Remedy Selection Process," 9355.7-04/PB95-96324/EPA540/R95/052.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/Superfund Hotline at (800) 424-9346 (in the Washington, DC metropolitan area, (703) 412-9810). The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 553-7672 (in the Washington, DC metropolitan area, (703) 412-3323). Or contact Sherri Clark, Remedial Operations and Guidance Branch, Hazardous Site Control Division, Office of Emergency and Remedial Response (5203G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 at (703) 603-8820.

## SUPPLEMENTARY INFORMATION:

### A. Background

The U.S. Environmental Protection Agency responds to releases and threatened releases of hazardous substances under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Regulations governing such responses are found in the National Oil and Hazardous Substances Pollution Contingency Plan or NCP. The process for remedy selection in the NCP generally requires that a remedial investigation be performed to identify the nature and extent of contamination at National Priorities List (NPL) sites. The remedy selection process also requires that a feasibility study be completed which

develops potential remedial alternatives for cleanup of the site. These remedial alternatives, which are aimed at protecting human health and the environment, should specify the acceptable level of contaminants of concern in a particular media as well as the associated exposure route(s). Knowing the projected future use of the land affects the determination of the exposure route(s) and receptor(s) of concern for the remedial action objectives.

Many people believe that EPA "chooses" residential land use in the risk assessment and remedy selection steps regardless of whether that use is relevant to the site. At many sites, the risk assessment evaluates the future residential scenario as a point of information to aid the decisionmaker in assessing the consequences of remedy selection. This is different from premising the final remedy, or even the baseline risk assessment, on future residential use. Many sites, while not currently residential, have residences adjacent or in close proximity. Consequently, current residential use is not assessed, while future residential use may be very relevant in the context of the site.

Analyses by the Office of Solid Waste and Emergency Response (OSWER) show that residents currently live on 15% of NPL sites, that 31% of NPL sites are used currently for industrial use, and that 25% of NPL sites are used currently for commercial use. For those sites where EPA has looked at potential future land use(s), 26% of the sites are expected to be residential, 35% of the sites are expected to be industrial, and 24% of the sites are expected to be commercial. These statistics represent the land uses at the facility itself; however, approximately 80% of the NPL sites have residents surrounding the site which would lead the Agency to consider residential use as a reasonably anticipated future land use for the site.

Given the diversity of land uses at and surrounding the site, determining the "reasonably anticipated" future land uses may be a challenge. Therefore, EPA believes that it is useful to involve the affected community and stakeholders in the scoping stage of the RI/FS process to begin discussions of what the future "reasonably anticipated" land uses might be.

OSWER analyzed the post-remedial land use at completed NPL sites and compared that with the projected future land use at the time the Record of Decision was signed. The analysis showed that approximately 50% of the sites with future residential land use

predicted are currently vacant. In comparison, only 23% of the sites with future industrial or commercial use predicted are vacant. The land use directive promotes discussions between the local land use authorities, the community groups, and the land owner(s) which may assist in avoiding vacant lots in the future and instead, to facilitate productive reuse of the property.

#### **B. Summary of the Directive**

The directive recommends early community involvement during the scoping phase of the Remedial Investigation/Feasibility Study (RI/FS) to develop reasonable assumptions regarding future land use(s) anticipated at a Superfund site. EPA believes that early community involvement, with a particular focus on the community's desired future uses of a property associated with the CERCLA site, should result in a more participatory and better informed decisionmaking process; greater community support for remedies selected as a result of this process; and, more expedited cleanups. Where there are environmental justice concerns, extra efforts should be made to reach out to and consult with affected community members who may not be reached through conventional outreach and communication vehicles. The directive is generally consistent with, and will help to implement, principles that were discussed and widely agreed upon in last year's CERCLA reauthorization debate. The directive is not as specific as some of last year's proposed legislation with respect to the degree of deference that EPA should give the community in determining reasonably anticipated land uses at the site, but clearly calls for a substantial community role.

The directive also recommends meeting with local land use planning officials and identifies sources of information to which one might look regarding the history and likely future of the property. Where the local planning process has involved thorough and broad-based public participation, EPA will be able to rely on planned uses resulting from that process with a greater degree of certainty than where that is not the case. At some sites there are environmental justice concerns and the local residents near the Superfund site may feel disenfranchised from the local land use planning and development process. In these instances, the directive calls attention to the need for special efforts to involve the full range of community residents.

In addition, the guidance describes how anticipated land uses are

considered in the RI/FS and remedy selection process. Remedial action alternatives developed in the RI/FS process should generally reflect the reasonably anticipated land use or uses. In some instances, concerns about cost or practicability may make it necessary to consider other possible uses. Land uses that will be available following completion of remedial action are determined as part of the remedy selection process. During this process, the goal of realizing reasonably anticipated future land use potential is considered along with other factors. Any combination of unrestricted uses, restricted uses, or use for long-term waste management may result.

#### **Goals**

EPA's goal is to issue this land use directive to assist EPA's Regional offices in developing reasonable assumptions regarding anticipated future land uses at a site for use in the RI/FS.

Please contact individuals and offices listed in the sections of this notice entitled **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** to learn more about the Land Use Directive.

Dated: May 30, 1995.

**Elliott P. Laws,**

*Assistant Administrator.*

[FR Doc. 95-13677 Filed 6-2-95; 8:45 am]

BILLING CODE 6560-50-P

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **Public Information Collection Approved by Office of Management and Budget**

May 26, 1995.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418-1379.

#### **Federal Communications Commission**

*OMB Control No.:* 3060-0355.

*Expiration Date:* 05/31/98.

*Title:* Rate of Return Reports, FCC Forms 492 and 492A.

*Estimated Annual Burden:* 1544 total annual hours; 8 hours per response.

*Description:* Filing of FCC Form 492 and FCC Form 492A is required by Sections 1.795 and 65.600 of the FCC Rules and Section 219 of the Communications Act of 1934, as

amended. Filing of the FCC Form 492 on a quarterly basis is required from each local exchange carriers or group of affiliated carriers which is not subject to Sections 61.41 through 61.49 of the Commission's Rules and which has filed individual access tariffs during the enforcement period. Each local exchange carrier or group of affiliated carriers subject to the previously stated sections shall file the FCC Form 492A report with the Commission for the calendar year. The forms are necessary to enable the Commission to monitor the access tariffs and to enforce maximum rate of return prescriptions and price cap earnings levels. A copy of each report must be retained in the principal office of the respondent and shall be filed in such manner as to be readily available for reference and inspection. FCC Form 492 and FCC Form 492A have been updated to display the current expiration date and are available for public use. Copies of the forms may be obtained by call 202-418-FORM.

*OMB Control No.:* 3060-0422.

*Expiration Date:* 05/31/98.

*Title:* Waivers (Application for Waiver of Hearing Aid Compatibility Requirement), Section 68.5.

*Estimated Annual Burden:* 30 total annual hours; 3 hours per response.

*Description:* Section 710(b) of the Communications Act requires that almost all telephones manufactured in or imported into this country after August 16, 1989 be hearing aid compatible. Refurbished, repaired or resold telephones, telephones used with public and private mobile radio services, and secure telephones used for classified communications are exempt. The HAC Act provides a three year grace period for cordless telephones before they must comply with the requirement. Congress recognized, however, that there may be technological and/or economical reasons some new telephones may not meet the hearing aid compatibility requirement. Therefore, it provided for a waiver requirement for new telephones base on technological and economical grounds. Section 68.5 of the Commission's rules provides the criteria to be used to assess waivers. Applicants seeking waivers must submit sufficient information for the Commission to make an informed decision.

Federal Communications Commission.

**LaVera F. Marshall,**

*Acting Secretary.*

[FR Doc. 95-13563 Filed 6-2-95; 8:45 am]

BILLING CODE 6712-01-F

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 26, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418-0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395-3561.

*OMB Number:* 3060-0031.

*Title:* Application for Consent of Assignment of Broadcast Station Construction Permit or License.

*Form No.:* FCC 314.

*Action:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit.

*Frequency of Response:* On occasion.

*Estimated Annual Burden:* 1060 responses; 83.42 hour burden per response; 88,246 hours total annual burden.

*Needs and Uses:* Section 154(j), 308 and 310(d) of the Communications Act of 1934, as amended require FCC Form 314 to be filed when applying for assignment of a broadcast station construction permit. This information is used by FCC staff to determine whether the assignee meets basic statutory requirements to become a Commission permittee or licensee.

*OMB Number:* 3060-0032.

*Title:* Application for Consent to Transfer Control of Corporation Holding Broadcast Construction Permit or License.

*Form No.:* FCC 315.

*Action:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Frequency of Response:* On occasion.

*Estimated Annual Burden:* 1060 responses; 83.42 hours burden per response; 88,246 hours total annual burden.

*Needs and Uses:* Sections 154(i), 308 and 310(d) of the Communications Act of 1934, as amended require FCC Form 315 to be filed when applying for

consent to transfer control of corporation holding an AM, FM or TV broadcast station construction permit or license. The data is used by FCC staff to determine whether transferee meets basic statutory requirements to become a Commission permittee or licensee.

*OMB Number:* 3060-0470.

*Title:* Computer III Remand

Proceeding: Bell Operating Company Safeguards, and Tier 1 Local Exchange Company Safeguards (CC Docket No. 90-623) and Implementation of Further Cost Allocation Uniformity (MO&O).

*Form No.:* N/A.

*Action:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 90 responses; 300 hours burden per response; 27,00 hours total annual burden.

*Needs and Uses:* Section 201(b) of the Communications Act of 1934, as amended, requires that common carriers establish just and reasonable charges, practices and regulations for the services they provide; the Commission is responsible for regulating the telecommunications industry and ensuring that common carriers abide by its mandate. Since the carriers are allowed to provide nonregulated services the Commission must establish a mechanism to prevent carriers from imposing on ratepayers the costs and risks of nonregulated service. The cost allocation manual is reviewed by the Commission to ensure that all costs are properly classified between regulated and nonregulated activity.

*OMB Number:* 3060-0072.

*Title:* Airborne Mobile Radio Telephone License Application.

*Form No.:* FCC 409.

*Action:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 3000 responses; 5 minutes burden per response; 252 hours total annual burden.

*Needs and Uses:* FCC 409 is used by Commission staff to license airborne mobile units in the air-ground service to individuals who intend to become subscribers to a common carrier mobile radio service.

*OMB Number:* 3060-0509.

*Title:* Amendments to Parts 21, 22, 23 and 25 of the Commission's rules to require reporting of station frequency and technical parameters for registration by the Commission with the International Frequency Registration Board (IFRB).

*Form No.:* N/A.

*Action:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 7,747 responses; 10.3 hours burden per response; 77,205 hours total annual burden.

*Needs and Uses:* The NPRM proposed to collection date, which is FCC is required to report to the IFRB. The Commission will use the information to perform monitoring, reporting and coordinating functions to resolve matters raised with foreign governments or through the Treaty Branch of the Commission's Office of Engineering and Technology.

*OMB Number:* 3060-0387.

*Title:* Section 78.69 Cable Relay Station Records.

*Form No.:* N/A.

*Action:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 1,987 recordkeepers; 26 hours burden per recordkeeper; 51,662 hours total annual burden.

*Needs and Uses:* Section 78.69 requires that licensees of cable relay stations maintain records of certain inspections, observations and repairs. These records are used by FCC field personnel during investigations.

Federal Communications Commission.

**LaVera F. Marshall,**

*Acting Secretary.*

[FR Doc. 95-13564 Filed 6-2-95; 8:45 am]

BILLING CODE 6712-01-F

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## FEDERAL RESERVE SYSTEM

### **Associated Banc-Corp, 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 29, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Associated Banc-Corp*, Green Bay, Wisconsin; and *Associated Illinois Banc-Corp*, Green Bay, Wisconsin, to acquire 100 percent of the voting shares of *GN Bancorp, Inc.*, Chicago, Illinois, and thereby acquire *Gladstone-Norwood Trust & Savings Bank*, Chicago, Illinois.

**B. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Victoria Bancshares, Inc.*, Victoria, Texas; and *Victoria Financial Services, Inc.*, Wilmington, Delaware, to acquire 100 percent of the voting shares of *Cattlemen's Financial Services, Inc.*, Austin, Texas; *Cattlemen's Financial Services of Delaware Inc.*, Wilmington, Delaware; and *Cattlemen's State Bank*, Austin, Texas.

Board of Governors of the Federal Reserve System, May 30, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-13629 Filed 6-2-95; 8:45 am]

BILLING CODE 6210-01-F

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### **First Union Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 1995.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire *STATCO Inc.*, Rome, Georgia, and its subsidiary, *Home Federal Savings Bank*, Rome, Georgia, and thereby engage in operating a federal savings bank pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 30, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-13628 Filed 6-2-95; 8:45 am]

BILLING CODE 6210-01-F

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## FEDERAL TRADE COMMISSION

[File No. 932 3040]

### **APM Enterprises—Minn Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit

terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### **Agreement Containing Consent Order To Cease And Desist**

In the Matter of APM Enterprises—Minn Inc., a corporation. File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of APM Enterprises—Minn Inc., a corporation, (hereinafter referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby Agreed by and between proposed respondent, its attorneys, and counsel for the Federal Trade Commission that:

1. APM Enterprises—Minn Inc., doing business as Great Expectations of Minneapolis ("GE Minneapolis"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Illinois, with its office and principal place of business located at 3300 Edinborough Way, Suite 300, Edina, MN 55435.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:  
(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement

may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### **Order**

*I*

##### *It Is Ordered that:*

A. Respondent GE Minneapolis, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107(a) and (c) of the Truth in Lending Act, 15 U.S.C. §§ 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Minneapolis, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by Section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and Section 226.17(a) of Regulation Z, 12 CFR 226.17(a);

C. Respondent GE Minneapolis, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. §§ 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE Minneapolis, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit,

do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

## II

### Refund Program

It Is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. § 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

## III

It Is Further Ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

## IV

It Is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

## V

It Is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

## VI

It Is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

### Attachment 1

Dear Great Expectations Customer: As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$ \_\_\_\_\_. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \_\_\_\_\_.]

We regret any inconvenience this may have caused you.

### Great Expectations

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent APM Enterprises—Minn, Inc. ("GE Minneapolis").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Minneapolis, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Minneapolis failed to accurately calculate and disclose the annual percentage rate ("APR"), which resulted in some consumers paying more in interest charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE Minneapolis failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and has failed to separate the itemization from all other information provided in connection with the transaction. Also, GE Minneapolis failed to provide a descriptive explanation of the financing terms. For example, GE Minneapolis failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." GE Minneapolis also failed to provide a description of the amount financed, the total of payments, and the total sales price.

Additionally, the complaint alleges that GE Minneapolis failed to conspicuously disclose the finance charge. The purpose of the required disclosure is to make this term apparent to consumers.

Finally, the complaint alleges that GE Minneapolis failed to identify the creditor in each transaction and failed to provide the total sales price.

The consent agreement would prohibit GE Minneapolis from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE Minneapolis to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Minneapolis to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 95-13659 Filed 6-2-95; 8:45 am]  
BILLING CODE 6750-01-M

[File No. 942 3044]

### **The Eskimo Pie Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.  
**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Virginia-based corporation from misrepresenting the existence or amount of calories or any other nutrient or ingredient in any frozen dessert product and from falsely claiming that any frozen dessert product has been approved, endorsed or recommended by any person, group or organization.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** C. Steven Baker or Barbara Di Giulio, FTC/Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1860, Chicago, IL 60603, (312) 353-8156.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### **Agreement Containing Consent Order To Cease and Desist**

In the Matter of The Eskimo Pie Corporation, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Eskimo Pie Corporation, a corporation, and it now appearing that The Eskimo Pie Corporation, hereinafter sometimes referred to as proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

*It is hereby agreed* that by and between The Eskimo Pie Corporation, by its duly authorized officer and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Eskimo Pie Corporation is a Delaware corporation, with its office and principal place of business located at 901 Moorefield Park Drive, Richmond, Virginia 23236.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and

information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft of complaint, other than jurisdictional facts, are true.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make the information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order****I**

*It is ordered* that respondent The Eskimo Pie Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any frozen dessert product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms, logos, symbols, or any other means:

A. The existence or amount of calories or any other nutrient or ingredient in any such product; or

B. That such product has been approved, endorsed or recommended by any person, group or organization.

**II**

*It is ordered* that respondent The Eskimo Pie Corporation, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale, or distribution of any frozen dessert product in or affecting commerce, "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose clearly and prominently in any advertisement or promotional material that represents, in any manner, directly or by implication, through numerical or descriptive terms, logos, symbols, or any other means, that such product is a useful or appropriate part of a diabetic's diet:

A. The fat content per serving of such product expressed as 1) the number of grams and 2) the percentage of the "Maximum Daily Value", unless such product is low in total fat;

B. The saturated fat content per serving of such product expressed as 1) the number of grams and 2) the percentage of the "Maximum Daily Value" of the saturated fat, unless such product is low in saturated fat; and

C. The statement "Not a reduced calorie food" when such a statement would be required on the label pursuant to regulations promulgated by the Food and Drug Administration.

The statements required by subparagraphs A.1 and A.2 and B.1 and

B.2 of this Part shall appear in close proximity. For purposes of this Part, the term "Maximum Daily Value" shall mean the daily reference value or other daily intake limit for total fat or saturated fat established in an effective final regulation of the Food and Drug Administration. For purposes of this Part, "low in fat" and "low in saturated fat" shall mean the qualifying amount for such terms as set forth in regulations promulgated by the Food and Drug Administration.

For purposes of this Order, "clearly and prominently" shall mean as follows:

1. In a television or videotape advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it;

2. In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type; and

3. In a radio advertisement, the disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it.

**III**

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

**IV**

*It is further ordered* that for five (5) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All test reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, including correspondence from consumers.

**V**

*It is further ordered* that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising out of this Order.

**VI**

*It is further ordered* that respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, employees, and licensees engaged in the preparation or placement of advertisements or other materials covered by this Order.

**VII**

*It is further ordered* that respondent, or its successors and assigns, shall, for three (3) years after the date of the last dissemination of the representation to which they pertain, maintain and upon request make available to the Federal Trade Commission for inspection and copying all advertisements containing any representation covered by this Order.

**VIII**

*It is further ordered* that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Eskimo Pie Corporation (Eskimo Pie).

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns claims made by Eskimo Pie in its advertising for its Sugar Freedom frozen dessert products.

The Commission's complaint in this matter charges Eskimo Pie with engaging in unfair or deceptive practices in connection with its advertising of its

Sugar Freedom frozen dessert products. According to the complaint Eskimo Pie falsely represented that its Sugar Freedom frozen dessert products are significantly reduced in calories compared with comparable foods and that they are low in calories.

The complaint also alleges that Eskimo Pie falsely represented that the American Diabetes Association has approved or endorsed Eskimo Pie Sugar Freedom frozen dessert products.

Finally, the complaint alleges that Eskimo Pie represented that its Sugar Freedom frozen dessert products are particularly useful or appropriate in the diabetics's diet, but failed to disclose that many of these products are high in total fat and saturated fat and are not low or reduced in calories.

The consent order contains provisions designed to remedy the violations charged and to prevent Eskimo Pie from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits Eskimo Pie from misrepresenting the existence or amount of calories or any other nutrient or ingredient in any frozen dessert product; or that such product has been approved, endorsed or recommended by any person, group or organization.

Part II of the order requires that when Eskimo Pie represents that any frozen dessert product is a useful or appropriate part of a diabetic's diet, then it must disclose a) the total fat content if the product is not low in fat; b) the saturated fat content if the product is not low in saturated fat; and c) that the product is not a reduced calorie product when the FDA would require a similar disclosure in labelling.

Part III of the order provides that representations that would be specifically permitted in food labeling, under regulations issued by FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

Part IV of the order requires Eskimo Pie to maintain copies of all materials relied upon in making any representation covered by the order.

Part V of the order requires Eskimo Pie to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part VI of the order requires Eskimo Pie to distribute copies of the order to its operating divisions and to various officers, agents and representatives of Eskimo Pie.

Part VII of the order requires Eskimo Pie to maintain copies of all advertisements containing representations covered by the order.

Part VIII of the order requires Eskimo Pie to file with the Commission one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-13652 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3040]

**G.E.C.H., Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed financed charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order To Cease And Desist**

In the Matter of G.E.C.H., Inc., a corporation. File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of G.E.C.H., Inc., a corporation, (hereinafter sometimes referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

*It is hereby agreed* by and between proposed respondent and counsel for the Federal Trade Commission that:

1. G.E.C.H., Inc., doing business as Great Expectations of Cherry Hill ("GE Cherry Hill"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New Jersey with its office and principal place of business located at One Cherry Hill, Suite 600, Cherry Hill, NJ 08002.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

##### I

It is ordered that:

A. Respondent GE Cherry Hill, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107 (a) and (c) of the TILA, 15 U.S.C. 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Cherry Hill, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation,

subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

C. Respondent GE Cherry Hill, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

##### II

#### Refund Program

*It is further ordered that:*

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted;

B. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct Ira M. Goldberg, Esquire, to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter

from Mr. Goldberg confirming that respondent has complied with Part II. A. of this order;

C. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

##### III

*It is further ordered* that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

##### IV

*It is further ordered* that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

##### V

*It is further ordered* that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

##### VI

*It is further ordered* that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

#### Attachment 1

Dear Great Expectations Member: Some time ago, the Federal Trade Commission staff notified us that we had made some inadvertent errors in filling out certain Truth in Lending Act disclosure forms, which is the form you signed containing primarily the terms by which you agreed to pay for your Great Expectations membership over some period of time. After receiving the FTC notification, we went back and recomputed your finance charge and determined that we had miscalculated or improperly disclosed that charge, or the annual percentage rate. We

are therefore enclosing a refund check payable to your order in the amount of \$\_\_\_\_\_ which represents the amount you were inadvertently overcharged.

[In addition, your future monthly payments have been recalculated and, starting immediately, your monthly payments will be \$\_\_\_\_\_.]

We hope that your experience with Great Expectations has been a positive one and hope that you will feel free to notify us if there is anything we can do for you. We regret any inconvenience this may have caused you.

Very truly yours,  
[signed]

### **Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent G.E.C.H., Inc. ("GE Cherry Hill").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges the GE Cherry Hill, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Cherry Hill failed to accurately calculate and disclose the annual percentage rate ("APR"), which resulted in some consumers paying more in interest charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE Cherry Hill failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties.

Finally, the complaint alleges that GE Cherry Hill failed to identify the creditor in each transaction, and failed to provide the total payments and the total sales price.

The consent agreement would prohibit GE Cherry Hill from failing to accurately calculate and disclose the APR and any other terms by the TILA.

The consent agreement includes a refund program requiring GE Cherry

Hill to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Cherry Hill to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-13655 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3040]

### **Great Expectations Creative Management, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the franchisor of video dating services and its four franchises to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act and would require the franchises to make refunds to consumers who were misled by the undisclosed finance charges and APRs. In addition, the consent agreement would prohibit the respondents from providing franchises contracts with pre-printed APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following

consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Great Expectations Creative Management, Inc., Great Expectations, Inc., GEC Illinois, Inc., GEC Tennessee, Inc., and GEC Alabama, Inc., corporations. File No. 932 3040.

### **Agreement Containing Consent Order To Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Great Expectations Creative Management, Inc., Great Expectations, Inc., GEC Illinois, Inc., GEC Tennessee, Inc., and GEC Alabama, Inc., corporations, (hereinafter sometimes referred to as Proposed Respondents) and it now appearing that Proposed Respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It Is Hereby Agreed by and between Proposed Respondents, their attorneys, and counsel for the Federal Trade Commission that:

1. Great Expectations Creative Management, Inc. ("G/ECM") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its office and principal place of business located at 16830 Ventura Blvd., Suite P, Encino, CA 91436.

2. Great Expectations, Inc., ("G/EI") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its corporate office at 16830 Ventura Blvd., Suite P, Encino, CA 91436, and its principal places of business located at 1640 S. Sepulveda Blvd., Suite 100, Los Angeles, CA 91436, 17207 Ventura Blvd., Encino, CA 91316, and 450 N. Mountain, Suite B, Upland, CA 91786.

3. GEC Illinois, Inc. ("GE Illinois") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Illinois, with its office and principal place of business located at 1701 E. Woodfield Dr., Suite 400, Schaumburg, IL 60173.

4. GEC Tennessee, Inc. ("GE Tennessee") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of

California, with its office and principal place of business located at 5552 Franklin Rd., Suite 200, Nashville, TN 37220.

5. GEC Alabama, Inc. ("GE Alabama") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Alabama, with its office and principal place of business located at 7529 S. Memorial Pkwy., Suite C & D, Huntsville, AL 35802.

6. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.

7. Proposed Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

8. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

9. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true. This agreement shall apply only to the U.S. operations of Proposed Respondents.

10. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist

shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondents, address as stated in this agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

11. Proposed Respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

##### I

It Is Ordered that:

A. Respondent G/ECM, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from:

1. Providing a retail installment contract or any other financial instrument or disclosure to its franchisees that violates the Truth in Lending Act ("TILA"), 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR Part 226;

2. Providing a retail installment contract or other TILA disclosure that contains a pre-printed annual percentage rate;

3. Providing instructions for calculating or disclosing the annual percentage rate, finance charge, or monthly payments that conflict with the TILA and Regulation Z;

4. Failing to take reasonable steps sufficient to ensure that its franchisees are complying with the TILA or Regulation Z including, but not limited to, reviewing and randomly testing TILA disclosures used by its franchisees;

5. Failing to terminate, unless prohibited by state law, any franchise that G/ECM knows or should know does not comply with the TILA or Regulation Z;

6. Failing to make available to its franchisees a computer program or other comparable system that accurately calculates the disclosures required by the TILA and Regulation Z; and

7. Failing to provide Attachment 1 to all of its current franchisees;

B. Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107 (a) and (c) of the TILA, 15 U.S.C. §§ 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

C. Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

##### II

#### Refund Program

It is further ordered that:

A. Within sixty (60) days following the date of service of this order, Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama shall:

1. For each TILA disclosure relating to any executory contract or any contract consummated within two years prior to July 20, 1994, determine to whom Respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that

was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point; provided, however, that no determination need be made for any person that has already received a full refund of all finance charges paid to Respondents;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 2; provided, however, that should such consumer have a balance due and owing Respondents and should Respondents have a legal right to collect such balance under state law and under the terms of their contract with the consumer, the refund maybe applied to that balance and the excess, if any, shall be refunded to each such consumer;

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted;

B. No later than fifteen (15) days following the date of service of this order, Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, and agents, have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise Respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that Respondents have complied with Part II. A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by Respondents G/EI, GE Illinois, GE Tennessee, and GE Alabama.

### III

It Is Further Ordered that Respondents, their successors and assigns, shall maintain for at least five (5) years from the date service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

### IV

It Is Further Ordered that Respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that Respondents, their successors and assigns shall secure from each such person a signed statement acknowledging receipt of said order.

### V

It Is Further Ordered that Respondents, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

### VI

It Is Further Order that Respondents shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

### Attachment 1

#### *Important Notice To Great Expectations' Franchisees*

We have reached a settlement with the Federal Trade Commission concerning their claims of alleged violations of the Truth in Lending Act and the Federal Trade Commission Act. The Federal Trade Commission believes that the retail installment contracts and the formula listed on them that we may have provided to you in the past may not comply with the Truth in Lending Act.

As part of our settlement, we agreed to alert you to *immediately* stop using any retail installment contracts we provided until you can verify that they comply with all local, state, and federal laws. As always, we recommend that you have your forms

reviewed by your own attorney. We have a computer software program available for your use that can be used to help you make sure your disclosures are accurately calculated. To obtain a copy of this program, please contact Keith Granirer.

Jeffrey Ullman

President

Great Expectations Creative Management, Inc.

### Attachment 2

Dear Great Expectations Member: As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$\_\_\_\_\_. The refund represents the amount you may have been overcharged as a result of a possible error in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \$\_\_\_\_\_.]

We regret any inconvenience this may have caused you.

Great Expectations

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Great Expectations Creative Management, Inc. ("G/ECM"), Great Expectations, Inc. ("G/EI"), GEC Illinois, Inc. ("GE Illinois"), GEC Tennessee, Inc. ("GE Tennessee"), and GEC Alabama, Inc. ("GE Alabma").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that G/ECM provided its franchises with Truth in Lending Act ("TILA") disclosures that, when used by those franchisees, resulted in false and misleading disclosures of the annual percentage rate ("APR") and finance charge to consumers. Thus, the complaint alleges that G/ECM engaged in unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

The complaint also alleges that G/EI, GE Illinois, GE Tennessee, and GE Alabama, as creditors under the TILA, have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchisees failed to

accurately calculate and disclose the APR, which resulted in some consumers paying more in interest charges than the franchises disclosed. The complaint further alleges that this practice, when engaged in by G/EI, GE Alabama, and GE Illinois, was unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that G/EI, GE Illinois, GE Tennessee, and GE Alabama failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties.

Finally, the complaint alleges that G/EI, GE Illinois, GE Tennessee, and GE Alabama failed to identify the creditor in each transaction.

The consent agreement would prohibit G/ECM from providing any disclosures to its franchisees that violate the TILA. Because G/ECM disseminated TILA disclosure forms that contained pre-printed APRs without also providing adequate instructions for accurately calculating and disclosing the APR, the consent agreement would prohibit G/ECM's use of forms containing pre-printed APRs in the future. The consent agreement would further prohibit G/ECM from providing any calculation instructions that conflict with the TILA.

The consent agreement would require G/ECM to make sure that its franchisees are complying with the TILA, including reviewing and randomly testing franchisees' TILA disclosures. The consent agreement would also require G/ECM to make available to its franchisees a program that accurately calculates the disclosures required by the TILA and would require G/ECM to terminate, where permitted by state law, any franchise that it knows or should know does not comply with the TILA.

The consent agreement would prohibit G/EI, GE Illinois, GE Tennessee, and GE Alabama from failing to accurately calculate and disclose the APR and other terms required by the TILA.

The consent agreement includes a refund program requiring G/EI, GE Illinois, GE Tennessee, and GE Alabama to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require G/EI, GE Illinois, GE Tennessee, and GE Alabama to maintain records of their compliance with the consent agreement, distribute copies of the

agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, as it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-13653 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3040]

**Great Expectations of Baltimore, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act and would require the franchisees to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580, (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Great Expectations of Baltimore, Inc., Great Expectations of Washington, DC, Inc., Great Expectations of Washington, Inc., corporations. File No. 932 3040.

**Agreement Containing Consent Order To Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Great Expectations of Baltimore, Inc., Great Expectations of Washington, DC, Inc., and Great Expectations of Washington, Inc., corporations, (hereinafter collectively referred to as proposed respondents) and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents, their attorneys, and counsel for the Federal Trade Commission that:

1. Great Expectations of Baltimore, Inc. ("GE Baltimore") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Virginia, with its office and principal place of business located at 40 York Rd., Suite 500, Towson, MD 21204.
2. Great Expectations of Washington, DC, Inc. ("GE DC") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Maryland, with its office and principal place of business located at 8601 Westwood Center Dr., Vienna, VA 22182.
3. Great Expectations of Washington, Inc., doing business as Great Expectations of Raleigh/Durham ("GE Raleigh"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Maryland, with its office and principal place of business located at 3714 Benson Dr., Suite 200, Raleigh, NC 27609.
4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.
5. Proposed respondents waive:
  - (a) Any further procedural steps;
  - (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
  - (c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.
6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this

agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided

by law for each violation of the order after it becomes final.

#### Order

##### I

It is ordered that:

A. Respondent GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107 (a) and (c) of the TILA, 15 U.S.C. 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. 1605, and Sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by Section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and Section 226.17(a) of Regulation Z, 12 CFR 226.17(a);

D. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

E. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly

or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from:

1. Failing to include, in the finance charge and the annual percentage rate disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of their memberships, as required by Sections 106, 107, and 128 of the TILA, 15 U.S.C. 1605, 1606, and 1638, and Sections 226.4(b), 226.22, and 226.18(d) and (e) of Regulation Z, 12 CFR 226.4(b), 226.22, and 226.18 (d) and (e); and

2. Failing to exclude, from the amount financed disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of the their memberships, as required by Section 128 of the Truth in Lending Act, 15 U.S.C. 1638(a) and Section 226.18(b) of Regulation Z, 12 CFR 226.18(b); and

F. Respondents GE Baltimore, GE DC, and GE Raleigh, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

##### II

#### Refund Program

It is further ordered that:

A. Within thirty (30) days following the date of service of this order, respondents shall:

1. Determine to whom respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondents shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondents shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondents have complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondents.

### III

It is further ordered that respondents, their successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

### IV

It is further ordered that respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

### V

It is further ordered that respondents, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment, or sale resulting in the emergence of a

successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

### VI

It is further ordered that respondents shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

### Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$\_\_\_\_\_. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \$\_\_\_\_\_.]

We regret any inconvenience this may have caused you.

Great Expectations

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Great Expectations of Baltimore, Inc. ("GE Baltimore"), Great Expectations of Washington, DC, Inc. ("GE DC"), and Great Expectations of Washington, Inc. ("GE Raleigh").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Baltimore, GE DC, and GE Raleigh, as creditors under the Truth in Lending Act ("TILA"), have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchises failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some

consumers paying more in interest charges and finance charges than the franchises disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that these franchises failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and have failed to separate the itemization from all other information provided in connection with the transaction. Also, these franchises failed to provide a descriptive explanation of the financing terms. For example, the named franchises failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." The named franchises also failed to provide a description of the amount financed, the total of payments, and the total sales price.

The complaint also alleges that the named franchises failed to include in the finance charge a set-up fee that each charged to its customers that financed the costs of their memberships, but did not charge to its customers that paid cash. The TILA requires that such charges be made part of the finance charge. Instead, the named franchises included the set-up fees in the amount financed, which resulted in the finance charge and the APR being underdisclosed.

Finally, the complaint alleges that the named franchises failed to identify the creditor in each transaction, and failed to provide the total sales price.

The consent agreement would prohibit the franchises named herein from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring the named franchises to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require the named franchises to maintain records of their compliance with the consent agreement, distribute copies of the agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-13657 Filed 6-2-95; 8:45 am]

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[File No. 932-3040]

**Great Expectations of Columbus, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Stephen Cohen, FTC/S-4429, Washington, D.C. 20580, (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of Great Expectations of Columbus, Inc., a corporation; File No. 932-3040.

**Agreement Containing Consent Order to Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Great Expectations of Columbus, Inc., a corporation, (hereinafter referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is Hereby Agreed by and between proposed respondent, its attorney, and counsel for the Federal Trade Commission that:

1. Great Expectations of Columbus, Inc. ("GE Columbus") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its corporate office at 11835 West Olympic Boulevard, East Tower, Suite 490, Los Angeles, California, 90064, and its principal place of business located at 1103 Schrock Rd., Suite 101, Columbus, OH 43229.

2. Proposed respondent admits to all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

*I*

It is Ordered that:

A. Respondent GE Columbus, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by sections 107 (a) and (c) of the TILA, 15 U.S.C. 1606 (a) and (c), and sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Columbus, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation,

subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by section 106 of the TILA, 15 U.S.C. 1605, and sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.28(d);

C. Respondent GE Columbus, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE Columbus, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

## II

### Refund Program

It is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such

consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

## III

It is Further Ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

## IV

It is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

## V

It is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates,

or any other change in the corporation that may affect compliance obligations arising out of the order.

## VI

It is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

### Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$\_\_\_\_\_. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \$\_\_\_\_\_.]

We regret any inconvenience this may have caused you.

Great Expectations

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent Great Expectations of Columbus, Inc. ("GE Columbus").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Columbus, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Columbus failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE Columbus failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties.

Finally, the complaint alleges that GE Columbus failed to identify the creditor in each transaction.

The consent agreement would prohibit GE Columbus from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE Columbus to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Columbus to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 95-13658 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3040]

**Great Southern Video, Inc., et al.;  
Proposed Consent Agreement With  
Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the video dating service franchises to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act and would require the franchises to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580, (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order  
To Cease and Desist**

In the matter of Great Southern Video, Inc., New West Video Enterprises, Inc., MWVE, Inc., and Sun West Video, Inc., corporations; File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Great Southern Video, Inc., New West Video Enterprises, Inc., MWVE, Inc., and Sun West Video, Inc., corporations, (hereinafter sometimes referred to as proposed respondents) and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents, their attorney, and counsel for the Federal Trade Commission that:

1. Great Southern Video, Inc., doing business as Great Expectations of Dallas ("GE Dallas"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its office and principal place of business located at 14180 Dallas Parkway, Suite 100, Dallas, TX 75240.

2. New West Video Enterprises, Inc., doing business as Great Expectations of Houston ("GE Houston"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its office and principal place of business located at 50 Briarhollow, Suite 100, Houston, TX 77027.

3. MWVE, Inc., doing business as Great Expectations of Cleveland, Inc. ("GE Cleveland"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Ohio with its office and principal place of business located at 6300 Rockside Rd., Suite 200, Cleveland, OH 44131.

4. Sun West Video, Inc., doing business as Great Expectations for Singles ("GE Phoenix"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Arizona with its office and principal place of business located at 5635 N. Scottsdale Rd., Suite 190, Scottsdale, AZ 85253.

5. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

6. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

7. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its

decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

10. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

##### I

It is ordered that:

A. Respondents GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, their successors, and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by sections 107 (a) and (c) of the Truth in Lending Act ("TILA"), 15 U.S.C. 1606 (a) and (c), and §§ 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondents GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. 1605, and

§§ 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondents GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and § 226.17(a) of Regulation Z, 12 CFR 226.17(a);

D. Respondents GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and §§ 226.17 and 226.18 of Regulation Z, 12 CFR § 226.17 and 226.18;

E. Respondents GE Dallas, GE Houston, and GE Phoenix, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from:

1. Failing to include, in the finance charge and the annual percentage rate disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of their memberships, as required by sections 106, 107, and 128 of the TILA, 15 U.S.C. § 1605, 1606, and 1638, and §§ 226.4(b), 226.22, and 226.18 (d) and (e) and Regulation Z, 12 CFR § 226.4(b), 226.22, and 226.18 (d) and (e); and

2. Failing to exclude, from the amount financed disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of their memberships, as required by section 128 of the Truth in Lending act, 15 U.S.C. 1638(a) and § 226.18(b) of Regulation Z, 12 CFR § 226.18(b); and

F. Respondents GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection

with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

##### II

#### Refund Program

It is further ordered that:

A. Within thirty (30) days following the date of service of this order, respondents shall:

1. Determine to whom respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with § 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with § 226.4 of Regulation Z, 12 CFR 226.4, so that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondents shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondents shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondents have complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondents.

### III

It is further ordered that respondents, their successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

### IV

It is further ordered that respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

### V

It is further ordered that respondents, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

### VI

It is further ordered that respondents shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

### Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$\_\_\_\_\_. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \$\_\_\_\_\_.]

We regret any inconvenience this may have caused you.

Great Expectations

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Great Southern Video, Inc. ("GE Dallas"), New West Video Enterprises, Inc. ("GE Houston"), MWVE, Inc. ("GE Cleveland"), and Sun West Video, Inc. ("GE Phoenix").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Dallas, GE Houston, GE Cleveland, and GE Phoenix, as creditors under the Truth in Lending Act ("TILA"), have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchises failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchises disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act. The complaint also alleges that these franchises failed to disclose the finance charge more conspicuously than any other disclosure except the APR and the creditor's identity.

Additionally, the complaint alleges that these franchises failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and have failed to separate the itemization from all other information provided in connection with the transaction. Also, these franchises failed to provide a descriptive explanation of the financing terms. For example, the named franchises failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." The named franchises also failed to provide a description of the amount financed, the total of payments, and the total sales price.

The complaint also alleges that GE Dallas, GE Houston, and GE Phoenix failed to include in the finance charge a set-up fee that each charged to its customers that financed the costs of their memberships, but did not charge to its customers that paid cash. The TILA requires that such charges be made part of the finance charge. Instead, these franchises included the set-up fees in the amount financed, which resulted in the finance charge and the APR being underdisclosed.

The complaint also alleges that GE Houston failed to disclose the amount financed and the total of payments.

Finally, the complaint alleges that all of the named franchises failed to identify the creditor in each transaction, and failed to provide the total sales price.

The consent agreement would prohibit the franchises named herein from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring the named franchises to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require the named franchises to maintain records of their compliance with the consent agreement, distribute copies of the agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-13662 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3040]

### JAMS Financial, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating

service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### **Agreement Containing Consent Order To Cease and Desist**

In the matter of Jams Financial, Inc., a corporation; File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of JAMS Financial, Inc., a corporation, (hereinafter referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is Hereby Agreed by and between proposed respondent, its attorney, and counsel for the Federal Trade Commission that:

1. JAMS Financial, Inc., doing business as Great Expectations of Milwaukee ("GE Milwaukee"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Wisconsin, with its corporate office at 11835 W. Olympic Blvd., Suite 490, Los Angeles, CA 90064, and its principal place of business located at 16650 W. Bluemound, Suite 100, Brookfield, WI 53005.

2. Proposed respondent admits to all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may

be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### **Order**

*I*

It is Ordered that:

A. Respondent GE Milwaukee, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107(a) and (c) of the TILA, 15 U.S.C. 1606(a) and (c), and sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Milwaukee, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by section 106 of the TILA, 15 U.S.C. 1605, and sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondent GE Milwaukee, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE Milwaukee, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit,

do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 C.F.R. Part 226.

## II

### Refund Program

It is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

## III

It is Further Ordered that respondent, its successors and assigns, shall maintain for a least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

## IV

It is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

## V

It is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation, that may affect compliance obligations arising out of the order.

It is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which its has complied with this order.

### Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$\_\_\_\_\_. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \$\_\_\_\_\_.]

We regret any inconvenience this may have caused you.

Great Expectations

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent JAMS Financial, Inc. ("GE Milwaukee").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Milwaukee, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Milwaukee failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Finally, the complaint alleges that GE Milwaukee failed to identify the creditor in each transaction.

The consent agreement would prohibit GE Milwaukee from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE Milwaukee to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Milwaukee to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-13661 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3040]

**KGE, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order To Cease And Desist**

In the matter of KGE, Inc., a corporation. File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of KGE, Inc.,

a corporation, (hereinafter referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between proposed respondent, its attorneys, and counsel for the Federal Trade Commission that:

1. KGE, Inc., doing business as Great Expectations of Sausalito, Great Expectations of Mountain View, and Great Expectations of Walnut Creek ("GE-SFA"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its corporation office at 1943 Landings Dr., Mountain View, CA 94043, and its principal places of business located 2401 Marinship Way, Suite 100, Sausalito, CA 94965, 2085 Landings Dr., Mountain View, CA 94043, and 1280 Civic Dr., Suite 300, Walnut Creek, CA 94596.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of finding of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and

if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

*I*

It Is Ordered that:

A. Respondent GE-SFA, its successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107(a) and (c) of the TILA, 15 U.S.C. 1606(a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE-SFA, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith

cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. 1605, and Sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondent GE-SFA, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE-SFA, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

## II

### Refund Program

It Is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the

amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

## III

It Is Further Ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

## IV

It Is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

## V

It Is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation

that may affect compliance obligations arising out of the order.

## VI

It Is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

### Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$\_\_\_\_\_. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \$\_\_\_\_\_.]

We regret any inconvenience this may have caused you.

Great Expectations

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent KGE, Inc. ("GE-SFA").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE-SFA, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE-SEA failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE-SFA failed to accurately

disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties.

Finally, the complaint alleges that GE-SFA failed to identify the creditor in each transaction.

The consent agreement would prohibit GE-SFA from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE-SFA to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE-SFA to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-13654 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932-3040]

**San Antonio Singles of Texas, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the video dating service franchises to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act and would require the franchises to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary,

Room 159, 6th St. and Pa. Ave., NW., Washington, DC., 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order To Cease and Desist**

In the Matter of San Antonio Singles of Texas, Inc., and Austin Singles of Texas, Inc., corporations; File No 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of San Antonio Singles of Texas, Inc., and Austin Singles of Texas, Inc., corporations, (hereinafter sometimes referred to as proposed respondents) and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is Hereby Agreed by and between proposed respondents, their attorney, and counsel for the Federal Trade Commission that:

1. San Antonio Singles of Texas, Inc., doing business as Great Expectations of San Antonio ("GE San Antonio"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its corporate office at 10497 Town & Country Way, Suite 214, Houston, TX 77024, and its principal place of business located at 8131 I.H. 10 West, Suite 225, San Antonio, TX 78230.

2. Austin Singles of Texas, Inc., doing business as Great Expectations of Austin ("GE Austin"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Texas, with its corporate office at 10497 Town & Country Way, Suite 214, Houston, TX 77024, and its principal place of business located at 9037 Research Blvd. Suite 130, Austin, TX 78758.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;  
(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and  
(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may

be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after its becomes final.

### Order

#### I

It is Ordered that:

A. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107 (a) and (c) of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1606 (a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. § 1605, and Sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by Section 128(b)(1) of the TILA, 15 U.S.C. § 1638(b)(1), and Section 226.17(a) of Regulation Z, 12 CFR 226.17(a);

D. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. §§ 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;.

E. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from:

1. Failing to include, in the finance charge and the annual percentage rate disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of their memberships, as required by Sections 106, 107, and 128 of the TILA, 15 U.S.C. §§ 1605, 1606, and 1638, and Sections 226.4(b), 226.22, and 226.18 (d) and (e) of Regulation Z, 12 CFR 226.4(b), 226.22, and 226.18 (d) and (e); and

2. Failing to exclude, from the amount financed disclosed to the consumer, set-up or other fees that are charged only to consumers who finance the costs of their memberships, as required by Section 128 of the Truth in Lending Act, 15 U.S.C. § 1638(a) and Section 226.18(b) of Regulation Z, 12 CFR 226.18(b); and

F. Respondents GE San Antonio, and GE Austin, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

#### II

##### Refund Program

It is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondents shall:

1. Determine to whom respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one-quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that

was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one-quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. § 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondents shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, and agents, have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondents shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondents have complied with Part II. A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondents.

#### III

It is Further Ordered that respondents, their successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

## IV

It is Further Ordered that respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

## V

It is Further Ordered that respondents, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

## VI

It is Further Ordered that respondents shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

**Attachment 1**

Dear Great Expectations Member:

We were recently notified by the Federal Trade Commission staff ("FTC") that we may have inadvertently miscalculated and/or improperly disclosed information in your Retail Installment Contract which the FTC believes is inconsistent with certain provisions of the Truth in Lending Act. After extensive investigation by us, along with conversations with the FTC, we have decided that it would be in the best interest of all parties to [refund] [credit to your account] the amount of \$ \_\_\_\_\_ which would cover any incorrect calculations. [Additionally, please be advised that your future monthly payments have been reduced to \$ \_\_\_\_\_ starting \_\_\_\_\_.]

We at Great Expectations are always interested in providing our members prompt professional services and are here to answer any questions you may have regarding this or any other matter.

Sincerely,

## Great Expectations

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents San Antonio Singles of Texas, Inc. ("GE San Antonio"), and Austin Singles of Texas, Inc. ("GE Austin").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE San Antonio and GE Austin, creditors under the Truth in Lending Act ("TILA"), have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchises failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchises disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that these franchises failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and have failed to separate the itemization from all other information provided in connection with the transaction. Also, these franchises failed to provide a descriptive explanation of the financing terms. For example, the named franchises failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." The named franchises also failed to provide a description of the amount financed, the total of payments, and the total sales price.

The complaint also alleges that the named franchises failed to include in the finance charge a set-up fee that each charged to its customers that financed the costs of their memberships, but did not charge to its customers that paid cash. The TILA requires that such charges be made part of the finance

charge. Instead, these franchises included the set-up fees in the amount financed, which resulted in the finance charge and the APR being underdisclosed.

Finally, the complaint alleges that the named franchises failed to identify the creditor in each transaction, and failed to provide the total sales price.

The consent agreement would prohibit the franchises named herein from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring the named franchises to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require the named franchises to maintain records of their compliance with the consent agreement, distribute copies of the agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-13664 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3040]

**Sterling Connections, Inc., et al.;**  
**Proposed Consent Agreement With**  
**Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the video dating service franchises to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchises to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of STERLING CONNECTIONS, INC., PRIVATE EYE PRODUCTIONS, INC., AND GREATEX DENVER, INC., corporations; File No. 932 3040.

#### **Agreement Containing Consent Order To Cease and Desist**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sterling Connections, Inc., Private Eye Productions, Inc., and GREATEX Denver, Inc., corporations (hereinafter sometimes referred to as proposed respondents), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between proposed respondents, their attorney, and counsel for the Federal Trade Commission that:

1. Sterling Connections, Inc., doing business as Great Expectations of Seattle ("GE Seattle"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Oregon, with its office and principal place of business located at 305 108th Ave., N.E., Suite 205, Bellevue, WA 98004.

2. Private Eye Productions, Inc., doing business as Great Expectations of Portland ("GE Portland"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Oregon, with its office and principal place of business located at 5531 S.W. Macadam Ave., Suite 225, Portland, OR 97201.

3. GREATEX Denver, Inc., doing business as Great Expectations of Denver ("GE-Denver"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Washington with its office and principal place of business located at 3773 Cherry Creek North Dr., Suite 140, Denver, CO 80209.

4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

5. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other

orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### **Order**

*I*

It is ordered that:

A. Respondents GE Seattle, GE Portland, and GE Denver, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by sections 107 (a) and (c) of the Truth in Lending Act ("TILA"), 15 U.S.C. 1606 (a) and (c), and §§ 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondents GE Seattle, GE Portland, and GE Denver, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and § 226.17(a) of Regulation Z, 12 CFR 226.17(a);

C. Respondents GE Seattle, GE Portland, and GE Denver, their successors and assigns, and their officers, agents, representatives, and

employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and §§ 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondents GE Seattle, GE Portland, and GE Denver, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

## II

### Refund Program

It is further ordered that:

A. Within thirty (30) days following the date of service of this order, respondents shall:

1. For each TILA disclosure relating to any executory contract or any contract or any contract consummated within two years prior to August 2, 1994, determine to whom respondents disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with § 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with § 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted;

B. No later than fifteen (15) days following the date of service of this

order, respondents shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which they, their officers, employees, attorneys, and agents, have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondents;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondents shall direct the independent agent to review a statistically-valid sample of refunds. Respondents shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondents have complied with Part II A of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondents.

## III

It is further ordered that respondents, their successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully their compliance with this order.

## IV

It is further ordered that respondents, their successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondents, their successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

## V

It is further ordered that respondents, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in their corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

## VI

It is further ordered that respondents shall, within one hundred and eighty (180) days of the date of service of this

order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

## Attachment 1

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$\_\_\_\_\_. The refund represents the amount you are overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \$\_\_\_\_\_.]

We regret any inconvenience this may have caused you.

Great Expectations

## Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondents Sterling Connections, Inc. ("GE Seattle"), Private Eye Productions, Inc., ("GE Portland"), and GREATEX Denver, Inc. ("GE-Denver").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complainant alleges that GE Seattle, GE Portland, and GE Denver, as creditors under the Truth in Lending Act ("TILA"), have violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. These franchises failed to accurately calculate and disclose the annual percentage rate ("APR"), which resulted in some consumers paying more in interest charges than the franchises disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act. The complaint also alleges that these franchises failed to disclose the finance charge more conspicuously than any other disclosure except the APR and the creditor's identity.

Additionally, the complaint alleges that these franchises failed to accurately

disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and have failed to separate the itemization from all other information provided in connection with the transaction. Also, these franchises failed to provide a descriptive explanation of the financing terms. For example, the named franchises failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." The named franchises also failed to provide a description of the amount financed, the total of payments, and the total sales price.

Finally, the complaint alleges that all of the named franchises failed to identify the creditor in each transaction, and failed to provide the total sales price.

The consent agreement would prohibit the franchises named herein from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring the named franchises to make adjustments to the account of any consumer to whom they disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require the named franchises to maintain records of their compliance with the consent agreement, distribute copies of the agreement to their employees, and advise the Federal Trade Commission of any changes in their corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**  
Secretary.

[FR Doc. 95-13663 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

[File No. 932 3040]

**TRIAAC Enterprises, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair

methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order To Cease and Desist**

In the matter of TRIAAC Enterprises, Inc., a corporation; File No. 032 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of TRIAAC Enterprises, Inc., a corporation, (hereinafter sometimes referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is Hereby Agreed by and between proposed respondent and counsel for the Federal Trade Commission that:

1. TRIAAC Enterprises, Inc., doing business as Great Expectations of Sacramento ("GE Sacramento"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California with its office and principal place of business located at 2277 Fair Oaks Blvd., Suite 195, Sacramento, CA 95825.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:  
(a) Any further procedural steps;  
(b) The requirement that the

Commission's decision contain a statement of findings of fact and conclusions of law; and  
(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may

be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

## Order

### I

It is ordered that:

A. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by sections 107 (a) and (c) of the TILA, 15 U.S.C. 1606 (a) and (c), and sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by section 106 of the TILA, 15 U.S.C. 1605, and sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to segregate the disclosures required by the TILA from all other information provided in connection with the transaction, including from the itemization of the amount financed, as required by section 128(b)(1) of the TILA, 15 U.S.C. 1638(b)(1), and section 226.17(a) of Regulation Z, 12 CFR 226.17(a);

D. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees,

directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

E. Respondent GE Sacramento, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR Part 226.

### II

#### Refund Program

It is Further Ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with § 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with section 108(e) of the TILA, 15 U.S.C. 1604(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, the amount of adjustment for future payments and the number of future payments to be adjusted;

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, and

agents, have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with Part II. A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

### III

It Is Further Ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal Trade Commission for inspection and copying all documents and other records necessary to demonstrate fully its compliance with this order.

### IV

It Is Further Ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect to the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

### V

It Is Further Ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

### VI

It Is Further Ordered that respondent shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

**Attachment 1**

Dear Great Expectations Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$ \_\_\_\_\_. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \$ \_\_\_\_\_.]

We regret any inconvenience this may have caused you.

Great Expectations

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent TRIAAC Enterprises, Inc. ("GE Sacramento").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE Sacramento, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE Sacramento failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE Sacramento failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties, and failed to separate the itemization from all other information provided in connection with the transaction. Also, GE Sacramento failed to provide a descriptive explanation of the financing

terms. For example, GE Sacramento failed to explain that the APR is "the cost of your credit as a yearly rate" and that the finance charge is "the dollar amount the credit will cost you." GE Sacramento also failed to provide a description of the amount financed, the total of payments, and the total sales price.

Finally, the complaint alleges that GE Sacramento failed to identify the creditor in each transaction.

The consent agreement would prohibit GE Sacramento from failing to accurately calculate and disclose the APR and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE Sacramento to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE Sacramento to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**  
*Secretary.*

[FR Doc. 95-13660 Filed 6-2-95; 8:45 am]  
BILLING CODE 6750-01-M

[File No. 932 3040]

**V.L.P. Enterprises, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a video dating service franchise to properly and accurately disclose the annual percentage rate (APR) and other credit terms of financed memberships, as required by the federal Truth in Lending Act, and would require the franchise to make refunds to consumers who were misled by the undisclosed finance charges and APRs.

**DATES:** Comments must be received on or before August 4, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Cohen, FTC/S-4429, Washington, DC 20580. (202) 326-3222.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order to Cease and Desist**

In the matter of V.L.P. Enterprises, Inc., a corporation; File No. 932 3040.

The Federal Trade Commission having initiated an investigation of certain acts and practices of V.L.P. Enterprises, Inc., a corporation, (hereinafter sometimes referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It Is Hereby agreed by and between proposed respondent, its attorneys, and counsel for the Federal Trade Commission that:

1. V.L.P. Enterprises, Inc., doing business as Great Expectations of San Diego ("GE San Diego"), is a corporation organized, existing, and doing business under and by virtue of the laws of the state of California, with its office and principal place of business located at 3465 Camino Del Rio South, Suite 300, San Diego, CA 92108.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:  
(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) Any right to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed

respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

##### I

It is ordered that:

A. Respondent GE San Diego, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the annual percentage rate, as required by Sections 107(a) and (c) of the Truth in Lending Act, 15 U.S.C. §§ 1606(a) and (c), and Sections 226.18(e) and 226.22 of Regulation Z, 12 CFR 226.18(e) and 226.22;

B. Respondent GE San Diego, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to accurately calculate and disclose the finance charge, as required by Section 106 of the TILA, 15 U.S.C. 1605, and Sections 226.4 and 226.18(d) of Regulation Z, 12 CFR 226.4 and 226.18(d);

C. Respondent GE San Diego, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to make all disclosures in the manner, form, and amount required by Sections 122 and 128(a) of the TILA, 15 U.S.C. 1632 and 1638(a), and Sections 226.17 and 226.18 of Regulation Z, 12 CFR 226.17 and 226.18;

D. Respondent GE San Diego, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the offering of credit, do forthwith cease and desist from failing to comply with the TILA, 15 U.S.C. 1601 *et seq.*, and Regulation Z, 12 CFR part 226.

##### II

#### Refund Program

It is further ordered that:

A. Within thirty (30) days following the date of service of this order, respondent shall:

1. Determine to whom respondent disclosed on the original TILA

disclosure an annual percentage rate that was miscalculated by more than one quarter of one percentage point below the annual percentage rate determined in accordance with Section 226.22 of Regulation Z, 12 CFR 226.22, or that disclosed a finance charge that was miscalculated by more than one dollar below the finance charge determined in accordance with Section 226.4 of Regulation Z, 12 CFR 226.4, so that each such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower, plus a tolerance of one quarter of one percentage point;

2. Calculate a lump sum refund and a monthly payment adjustment, if applicable, in accordance with Section 108(e) of the TILA, 15 U.S.C. 1607(e);

3. Mail a refund check to each eligible consumer in the amount determined above, along with Attachment 1; and

4. Provide the Federal Trade Commission with a list of each such consumer, the amount of the refund, the number of payments refunded, and amount of adjustment for future payments and the number of future payments to be adjusted.

B. No later than fifteen (15) days following the date of service of this order, respondent shall provide the Federal Trade Commission with the name and address of three independent accounting firms, with which it, its officers, employees, attorneys, agents, and franchisees have no business relationship. Staff for the Division of Credit Practices of the FTC shall then have the sole discretion to choose one of the firms ("independent agent") and so advise respondent;

C. Within thirty (30) days following the date of adjustments made pursuant to this section, respondent shall direct the independent agent to review a statistically-valid sample of refunds. Respondent shall provide the Federal Trade Commission with a certified letter from the independent agent confirming that respondent has complied with part II.A. of this order;

D. All costs associated with the administration of the refund program and payment of refunds shall be borne by the respondent.

##### III

It is further ordered that respondent, its successors and assigns, shall maintain for at least five (5) years from the date of service of this order and, upon thirty (30) days advance written request, make available to the Federal trade Commission for inspection and

copying all documents and other records necessary to demonstrate fully its compliance with this order.

#### IV

It is further ordered that respondent, its successors and assigns, shall distribute a copy of this order to any present or future officers and managerial employees having responsibility with respect of the subject matter of this order and that respondent, its successors and assigns, shall secure from each such person a signed statement acknowledging receipt of said order.

#### V

It is further ordered that respondent, for a period of five (5) years following the date of service of this order, shall promptly notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, or any other change in the corporation that may affect compliance obligations arising out of the order.

#### VI

It is further ordered that respondent, shall, within one hundred and eighty (180) days of the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

#### Attachment 1

Dear Great Expectation Customer:

As part of our settlement with the Federal Trade Commission for alleged violations of the Truth in Lending Act, we are sending you the enclosed refund check in the amount of \$ \_\_\_\_\_. The refund represents the amount you were overcharged as a result of errors made by Great Expectations in calculating or disclosing the annual percentage rate or finance charge.

[In addition, your future monthly payments have been reduced. Starting immediately, your monthly payments will be \$ \_\_\_\_\_.]

We regret any inconvenience this may have caused you.

Great Expectations

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from respondent V.L.P. Enterprises, Inc. ("GE San Diego").

The proposed consent order has been placed on the public record for sixty

(60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that GE San Diego, as a creditor under the Truth in Lending Act ("TILA"), has violated the TILA and its implementing Regulation Z. Specifically, the TILA requires creditors to make clear and consistent disclosures of the credit terms in a financed transaction. GE San Diego failed to accurately calculate and disclose the annual percentage rate ("APR") and the finance charge, which resulted in some consumers paying more in interest charges and finance charges than the franchise disclosed. The complaint further alleges that this practice is unfair or deceptive in violation of the Federal Trade Commission Act.

Additionally, the complaint alleges that GE San Diego failed to accurately disclose the itemization of the amount financed, which assists consumers in understanding whether they are being charged a prepaid finance charge or whether any of the proceeds are being distributed to third parties. The complaint also alleges that on numerous occasions, GE San Diego failed to provide consumers with any TILA disclosures. The purpose of these required disclosures is to make the terms easier for consumers to understand.

Finally, the complaint alleges that GE San Diego failed to identify the creditor in each transaction.

The consent agreement would prohibit GE San Diego from failing to accurately calculate and disclose and disclose the APR, finance charge, and any other terms required by the TILA.

The consent agreement includes a refund program requiring GE San Diego to make adjustments to the account of any consumer to whom it disclosed an APR or finance charge that was lower than the amount the consumer actually was required to pay.

The consent agreement would also require GE San Diego to maintain records of its compliance with the consent agreement, distribute copies of the agreement to its employees, and advise the Federal Trade Commission of any changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95-13656 Filed 6-2-95; 8:45 am]

BILLING CODE 6750-01-M

#### GENERAL SERVICES ADMINISTRATION

#### Change in Solicitation Procedures Under the Small Business Competitiveness Demonstration Program

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Notice.

**SUMMARY:** Title VII of the "Business Opportunity Development Act of 1988" (Public Law 100-656) established the Small Business Competitiveness Demonstration Program and designated nine (9) agencies, including GSA, to conduct the program over a four (4) year period from January 1, 1989 to December 31, 1992. The Small Business Opportunity Enhancement Act of 1992 (Public Law 192-366) extended the demonstration program until September 1996 and made certain changes in the procedures for operation of the demonstration program. The law designated four (4) industry groups for testing whether the competitive capabilities of the specified industry groups will enable them to successfully compete on an unrestricted basis. The four (4) industry groups are: construction (except dredging); architectural and engineering (A&E) services (including surveying and mapping); refuse systems and related services (limited to trash/garbage collection); and non-nuclear ship repair. Under the program, when a participating agency misses its small business participation goal, restricted competition is reinstated only for those contracting activities that failed to attain the goal. The small business goal is 40 percent of the total contract dollars awarded for construction, trash/garbage collection services, and non-nuclear ship repair and 35 percent of the total contract dollars awarded for architect-engineer services. This notice announces modifications to GSA's solicitation practices under the demonstration program based on a review of the agency's performance during the period from April 1, 1994 to March 31, 1995. Modifications to solicitation practices are outlined in the Supplementary Information section below and apply to solicitations issued on or after July 1, 1995.

**EFFECTIVE DATE:** July 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Tom Wisnowski, Office of GSA Acquisition Policy, (202) 501-1224.

**SUPPLEMENTARY INFORMATION:**

Procurements of construction or trash/garbage collection with an estimated value of \$25,000 or less will be reserved for emerging small business concerns in accordance with the procedures outlined in the interim policy directive issued by the Office of Federal Procurement Policy (59 FR 123513, March 11, 1993).

Procurements of construction or trash/garbage collection with an estimated value that exceeds \$25,000 by GSA contracting activities will be made in accordance with the following procedures:

*Construction Services in Groups 15, 16, and 17:*

Procurements for all construction services (except solicitations issued by GSA contracting activities in Regions 1, 2, 3, 4, 5, 8, 9, 10, and the National Capital Region) in Group 15 will be conducted on an unrestricted basis.

Procurements for construction services in Group 15 issued by GSA contracting activities in Regions 1, 2, 3, 4, 5, 8, 9, 10, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition for two or more small businesses. If no expectation exists, the procurements will be conducted on an unrestricted basis.

Region 1 encompasses the states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges Counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 5 encompasses the states of Illinois, Indiana, Ohio, Michigan, Minnesota, and Wisconsin.

Region 8 encompasses the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

Region 10 encompasses the states of Alaska, Idaho, Oregon, and Washington.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

*Trash/garbage collection services in PSC S205:*

Procurements for trash/garbage collection services in PSC S205 will be conducted on an unrestricted basis.

*Architect-Engineer services (all PSC codes under the Demonstration Program):*

Procurements for all architect-engineer services (except procurements issued by contracting activities in GSA Regions 2, 3, 4, 9, and the National Capital Region) shall be conducted on an unrestricted basis.

Procurements for architect-engineer services issued by GSA contracting activities in GSA Regions 2, 3, 4, 9, and the National Capital Region shall be set aside for small business when there is a reasonable expectation of obtaining competition from two or more small businesses. If no expectation exists, the procurement will be conducted on an unrestricted basis.

Region 2 encompasses the states of New Jersey, New York, and the territories of Puerto Rico and the Virgin Islands.

Region 3 encompasses the states of Pennsylvania, Delaware, West Virginia, Maryland (except Montgomery and Prince Georges counties), and Virginia (except the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William).

Region 4 encompasses the states of Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Mississippi, and Tennessee.

Region 9 encompasses the states of Arizona, California, Hawaii, and Nevada.

The National Capital Region encompasses the District of Columbia, Montgomery and Prince Georges counties in Maryland, and the city of Alexandria and the counties of Arlington, Fairfax, Loudoun, and Prince William in Virginia.

*Non-nuclear ship repairs:*

GSA does not procure non-nuclear ship repairs.

Dated: May 23, 1995.

**Ida M. Ustad,**

*Associate Administrator, Office of Acquisition Policy.*

[FR Doc. 95-13587 Filed 6-2-95; 8:45 am]

BILLING CODE 6820-61-M

**GOVERNMENT PRINTING OFFICE**

**The Federal Register Online Via GPO Access; Public Meeting for Federal, State and Local Agencies, and Others Interested in a Demonstration of GPO Access, the Online Service Providing the Federal Register and Other Federal Databases**

The Superintendent of Documents will hold a public meeting for Federal, state and local government agencies, and any others interested in an overview and demonstration of the Government Printing Office's online service, GPO Access, provided under the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Pub. L. 103-40).

Sessions will be held at Duquesne University, Duquesne Union Building, the Duquesne Room, 600 Forbes Avenue, Pittsburgh, PA, on Monday, July 17, from 9 a.m. to 10:30 a.m. and 11 a.m. to 12:30 p.m. There is no charge to attend.

The online **Federal Register** Service offers access to the daily issues of the **Federal Register** by 6 a.m. on the day of publication. All notices, rules and proposed rules, Presidential documents, executive orders, separate parts, and reader aids are included in the database as ASCII text files and as Adobe Acrobat Portable Document Format (PDF) files, with graphics provided in TIFF format. The online **Federal Register** is available via the Internet or as a dial-in service. Historical data is available from January 1994 forward.

Other databases currently available online through GPO Access include the Congressional Record; Congressional Record Index, including the History of Bills; Congressional Bills; Public Laws; U.S. Code; and GAO Reports.

Individuals interested in attending may reserve a space by contacting John Berger, Product Manager at the GPO's Office of Electronic Information Dissemination Services, by telephone: 202-512-1525; by fax: 202-512-1262; or by Internet e-mail at john@eids05.eids.gpo.gov. Seating reservations will be accepted through Wednesday, July 12, 1995.

**Michael F. DiMario,**

*Public Printer.*

[FR Doc. 95-13165 Filed 5-26-95; 8:45 am]

BILLING CODE 1505-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[CDC-561]

#### Announcement of Cooperative Agreement to the Association of State and Territorial Health Officials

##### Summary

The Centers for Disease Control and Prevention (CDC), National Immunization Program, announces the availability of fiscal year (FY) 1995 funds for a cooperative agreement with the Association of State and Territorial Health Officials (ASTHO) to identify improved methods of reaching and sustaining high immunization coverage, interrupting disease transmission, and improving vaccine preventable diseases surveillance for the States and territories. Approximately \$250,000 will be available in FY 1995 to support this project. It is expected the award will begin on or about September 15, 1995, for a 12-month budget period within a project period of 5 years. The funding estimate is subject to change.

The purposes of this immunization project are: to assure that the perspectives of State and territorial health officials are integrated into all programmatic aspects of the Childhood Immunization initiative; to provide linkage between States, private providers, and the Federal government in implementing the Vaccines for Children Program and other Federal and State vaccine initiatives; to coordinate efforts with the existing ASTHO school health project, maternal and child health programs and the existing ASTHO school health project, maternal and child health programs and the existing immunization efforts of the Association of Maternal and Child Health Programs (AMCHP), the Council of State and Territorial Epidemiologists (CSTE), and the Association for Vital Records and Health Statistics (AVRHS); and to facilitate outreach to private providers, non-profit organizations and entities involved in comprehensive school health to increase participation in the Vaccines for Children Program and other Federal and State vaccine initiatives.

In conducting activities to achieve the purpose of this program, CDC will: collaborate in the design of research protocols (e.g., Vaccines for Children (VFC) accountability studies, immunization coverage studies, random digit dialing (RDD) survey); the analysis and interpretation of data generated

from each project; and in the preparation of reports and manuscripts; provide other technical assistance in support of each project, as needed; collaborate in the planning, implementation, and evaluation of the various immunization training programs; and develop and coordinate immunization national policy and evaluation.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of "Healthy People 2000," see the section **Where to Obtain Additional Information.**)

##### Authority

This program is authorized under section 317(k) of the Public Health Service Act, 42 U.S.C. 247b(k), as amended.

##### Smoke-free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103-277, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

##### Eligible Applicant

Assistance will be provided only to ASTHO. No other applications are solicited. The Program Announcement and application kit have been sent to ASTHO. ASTHO is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because ASTHO represents the chief public health official of each State and territory. Through its own membership, ASTHO has developed unique knowledge and understanding of the needs and operations of State health agencies. ASTHO members have already developed an enormous wealth of experience in immunization coverage and improving vaccine preventable diseases surveillance.

##### Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR Part 100).

#### Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

#### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.185, Immunization Research, Demonstration, Public Information, and Education, Training, and Clinical Skills Improvement Projects.

#### Other Requirements

##### Paperwork Reduction Act

Individual studies or surveys that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

#### Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 561 and contact Carole J. Tully, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E-09, Atlanta, Georgia 30305, telephone (404) 842-6880.

A copy of "Healthy People 2000" (Full Report, Stock No. 017-001-00474-0) or "Healthy People 2000" (Summary Report, Stock No. 017-001-00473-1) referenced in the **Summary** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 512-1800.

Dated: May 30, 1995.

**Joseph R. Carter,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-13627 Filed 6-2-95; 8:45 am]

BILLING CODE 4163-18-P

#### Substance Abuse and Mental Health Services Administration

#### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh, Division of Workplace Programs, Room 13A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

**SUPPLEMENTARY INFORMATION:**

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACCU-LAB, Inc., 405 Alderson St., Schofield, WI 54476, 800-627-8200 (formerly: Alpha Medical Laboratory, Inc., Employee Health Assurance Group, ExpressLab, Inc.).

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615-331-5300.

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800-541-4931/205-263-5745.

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703-802-6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119-5412, 702-733-7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-227-2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414-355-4444/800-877-7016.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305-325-5810.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310-215-6020.

Clinical Reference Lab, 11850 West 85th St., Lenexa, KS 66214, 800-445-6917.

CompuChem Laboratories, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263/800-833-3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

CompuChem Laboratories, Inc., Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263 (Formerly: Roche CompuChem Laboratories, Inc., Special Division, A Member of the Roche Group, CompuChem Laboratories, Inc.—Special Division).

CORNING Clinical Laboratories, South Central Division, 2320 Schuetz Rd. St. Louis, MO 63146, 800-288-7293 (formerly: Metropolitan Reference Laboratories, Inc.).

CORNING Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 800-526-0947 (formerly: Damon Clinical Laboratories, Damon/MetPath).

CORNING Clinical Laboratories Inc., 1355 Mittel Blvd., Wood Dale, IL 60191, 708-595-3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories).

CORNING MetPath Clinical Laboratories, One Malcoln Ave., Teterboro, NJ 07608, 201-393-5000 (formerly: MetPath, Inc.).

CORNING National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410-536-1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science).

CORNING Nichols Institute, 7470-A Mission Valley Rd., San Diego, CA 92108-4406, 800-446-4728/619-686-3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT)).

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800-876-3652/417-836-3093.

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38-H, Great Lakes, IL 60088-5223, 708-688-2045/708-688-4171.

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 813-936-5446/800-735-5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912-244-4468.

Drug Labs of Texas, 15201 I-10 East, Suite 125, Channelview, TX 77530, 713-457-3784.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800-898-0180/206-386-2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215-674-9310.

Eagle Forensic Laboratory, Inc., 950 N. Federal Highway, Suite 308, Pompano Beach, FL 33062, 305-946-4324.

ELSOHLY Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601-236-2609.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608-267-6267.

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800-725-3784/915-563-3300 (formerly: Harrison & Associates Forensic Laboratories).

HealthCare/MetPath, 24451 Telegraph Rd., Southfield, MI 48034, 800-444-0106, ext. 650 (formerly: HealthCare/Preferred Laboratories).

Holmes Regional Medical Center Toxicology Laboratory, 5200 Babcock St., N.E., Suite 107, Palm Bay, FL 32905, 407-726-9920.

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513-569-2051.

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913-888-3927 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America, 13900 Park Center Rd., Herndon, VA 22071, 703-742-3100 (formerly: National Health Laboratories Incorporated).

Laboratory Corporation of America, d.b.a. LabCorp Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A-15, Nashville, TN 37217, 615-360-3992/800-800-4522 (formerly: National Health Laboratories, Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division).

Laboratory Corporation of America, 15305 N.E. 40th St., Redmond, WA 98052, 206-882-3400 (formerly: Regional Toxicology Services).

Laboratory Corporation of America, 2540 Empire Dr., Winston-Salem, NC 27103-6710, Outside NC: 919-760-4620/800-334-8627/Inside NC: 800-642-0894 (formerly: National Health Laboratories, Incorporated).

Laboratory Corporation of America Holdings, 1120 Stateline Rd., Southaven, MS 38671, 601-342-1286 (formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800-437-

4986 (formerly: Roche Biomedical Laboratories, Inc.).  
 Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504-392-7961.  
 Marshfield Laboratories, 1000 North Oak Ave., Marshfield, WI 54449, 715-389-3734/800-222-5835.  
 MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38175, 901-795-1515.  
 Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43699-0008, 419-381-5213.  
 Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302-655-5227.  
 MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800-832-3244/612-636-7466.  
 Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317-929-3587.  
 Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800-752-1835/309-671-5199.  
 MetPath Laboratories, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220-3610, 412-931-7200 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon).  
 MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503-413-4512, 800-237-7808(x4512).  
 National Psychopharmacology Laboratory, Inc., 9320 Park W. Blvd., Knoxville, TN 37923, 800-251-9492.  
 National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805-322-4250.  
 Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361.  
 Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440-0972, 503-687-2134.  
 Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509-926-2400.  
 PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908-769-8500/800-237-7352.  
 PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 415-328-6200/800-446-5177.  
 PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817-595-0294, (formerly: Harris Medical Laboratory).  
 Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913-338-4070/800-821-3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory).  
 Poisonlab, Inc., 7272 Clairemont Mesa Rd., San Diego, CA 92111, 619-279-2600/800-882-7272.  
 Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800-473-6640.  
 Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601-264-3856/800-844-8378.  
 Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804-378-9130.

Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800-749-3788.  
 S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505-848-8800.  
 Sierra Nevada Laboratories, Inc., 888 Willow St., Reno, NV 89502, 800-648-5472.  
 SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91045, 818-376-2520.  
 SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 904-787-9006, (formerly: Doctors & Physicians Laboratory).  
 SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 404-934-9205, (formerly: SmithKline Bio-Science Laboratories).  
 SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 708-885-2010, (formerly: International Toxicology Laboratories).  
 SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800-523-5447 (formerly: SmithKline Bio-Science Laboratories).  
 SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214-638-1301 (formerly: SmithKline Bio-Science Laboratories).  
 SmithKline Beecham Clinical Laboratories, 1737 Airport Way South, Suite 200, Seattle, WA 98134, 206-623-8100.  
 South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219-234-4176.  
 Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602-438-8507.  
 St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405-272-7052.  
 Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314-882-1273.  
 Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305-593-2260.  
 TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818-226-4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.).  
 UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800-492-0800/818-343-8191 (formerly: MetWest-BPL Toxicology Laboratory).

No laboratories withdrew from the Program in May.

**Richard Kopanda,**

*Acting Executive Officer, Substance Abuse and Mental Health Services Administration.*  
 [FR Doc. 95-13807 Filed 6-2-95; 8:45 am]

**BILLING CODE 4160-20-U**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Administration**

[Docket No. N-95-3923]

**Notice of Submission of Proposed Information Collection to OMB**

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 24, 1995.

**David S. Cristy,**

Director, Information Resources Management Policy and Management Division.

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* 1995 Property Owners and Managers Survey.

*Office:* Policy Development and Research.

*Description of the Need for the Information and Its Proposed Use:* HUD needs this survey to learn more about the property owners and managers who provide housing for over 35 million American families. The survey will focus on the owners and managers of all types of rental properties. HUD will use this survey to shape future housing policy for Congress.

*Form Number:* POMS-100(A); 100(B); 100(L); 101; 102; and 103.

*Respondents:* Business or Other For-Profit.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey .....	17,500		1		.88		15,387

*Total Estimated Burden Hours:* 15,387.

*Status:* New.

*Contact:* Duane McGough, HUD (202) 708-1060, Peter Fronczek, Census, (301) 763-8165, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

[FR Doc. 95-13601 Filed 6-2-95; 8:45 am]

BILLING CODE 4210-0-M

**Office of Assistant Secretary for Housing—Federal Housing Commissioner**

[Docket No. N-95-3904; FR-3903-N-02]

**Notice of Submission of Proposed Information Collection to OMB Section 811 Supportive Housing for Persons With Disabilities—Application Submission Requirements**

**AGENCY:** Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of Submission of Proposed Information Collection Section 811 Supportive Housing for Persons with Disabilities—Application Submission Requirements for FY 1995.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 — 7th Street, Southwest, Washington, DC 20410, telephone number (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to the application submission requirements for the Section 811 Supportive Housing Program for Persons with Disabilities. HUD is requesting a seven-day OMB review of this information collection.

The funds for this project development and construction assistance, which are capital advances and project rental assistance contracts were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, (Pub. L. 103-327, enacted September 28, 1994).

HUD intends to make available \$154,946,000 in capital advance assistance which will produce approximately 2,421 units of supportive housing for persons with disabilities. HUD also will make available sufficient project rental assistance funds to help cover the project's operating cost. These funds will be provided to nonprofit organizations to expand the supply of supportive housing for persons with disabilities.

This Section 811 application submission package describes the contents of the application package and includes the forms and other

information an applicant needs to file an application. The Section 811 application consists of 11 exhibits which are evaluated by HUD to determine (1) The applicant's eligibility to participate in the program; (2) the applicant's ability (financially and administratively) to develop and operate the proposed project; (3) the need for the supportive housing in the area to be served; (4) the extent to which the applicant has site control; (5) the suitability of the site; (6) the adequacy of the provision of supportive services; (7) the adequacy of the proposed facility; and (8) that the applicant has properly certified to comply with the various governmental requirements, Executive Orders, etc.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35);

- (1) the title of the information collection proposal;
- (2) the office of the agency to collect the information;
- (3) the description of the need for the information and its proposed use;
- (4) the agency form number, if applicable;
- (5) what members of the public will be affected by the proposal;
- (6) how frequently information submission will be required;
- (7) an estimate of the total number of hours needed to prepare the information submission including the number of respondents, frequency of response, and hours of response;
- (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and
- (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated May 24, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Section 811 Supportive Housing Program for Persons with

Disabilities—Application Submission Requirements.

*Office:* Office of Assistant Secretary for Housing—Federal Housing Commissioner.

*Description of the Need for the Information and its Proposed Use:* This information collection is required in connection with the application submission requirements for the Section 811 Supportive Housing Program for Persons with Disabilities. HUD intends to make available \$154,946,000 in

capital advance assistance to expand the supply of supportive housing for persons with disabilities. This information collection describes the contents of the application package which is used by HUD to determine the acceptability of the requests for capital advance assistance.

*Form Number:* HUD-92016-CA

*Respondents:* Nonprofit Organizations.

*Frequency of Submission:* Annually.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application package .....	400		1		41.2		14,960

*Total Estimated Burden Hours:* 14,960.

*Status:* Reinstatement with Change.

*Contact:* Margaret F. Milner, HUD (202) 708-4542, Joseph F. Lackey, Jr., OMB (202) 395-7316.

Dated: May 24, 1995.

**Section 202 Application Submission Requirements, OMB No. 2502-0462**

*A. Supporting Statement*

1. Need for Information

The Section 811 program, amended by the National Affordable Housing Act (NAHA) of 1990 and the Housing and Community Development Act of 1992, provides capital advances to nonprofit organizations to expand the supply of supportive housing for persons with disabilities. In order to ensure that only eligible nonprofit organizations are selected, it is important to obtain information from prospective applicants to assist HUD in determining if they have the administrative capacity to develop such a project and whether the project design and supportive services plan meet the needs of the residents. These factors are critical in meting statutory requirements and in protecting the Department's financial interest in projects funded under this program.

In keeping with the Department's commitment to streamline the Section 811 application submission package, the Department met with representatives of Section 811 nonprofit organizations, housing consultants and other program staff to discuss ideas for revamping the Section 811 application submission package to make it less burdensome to Section 811 applicants without compromising the Federal Government's financial interest in the project.

More recently, the Department held two working group sessions to identify further ways to streamline the Section

811 program and make it more consumer friendly. The working groups consisted of Sponsors of Section 811 projects and HUD staff. Additionally, the Department conducted a Section 811 consumer forum in which program beneficiaries, primarily disabled residents and potential residents, expressed their concerns about the quality of living in existing Section 811 projects and provided ideas for improving the program and projects. The supporting justification as contained herein reflects the results of the Department's meetings and telephone conversations with the private sector and HUD program staff.

The Section 811 application submission package for the fund reservation was approved by OMB under No. 2502-0462 which expired in December 1994. The Department is requesting reinstatement of OMB No. 2502-0462 to permit the Department to collect the information identified in this submission.

The Department has an on-going commitment to identify ways to simplify the process by which the Section 811 program is administered (including the application submission requirements) so that it can be more consumer friendly. Because of this commitment, the Department wanted greater participation from the private sector in revising the program. To accomplish this, additional time was needed to arrange for and conduct the various working group sessions with the private sector and other program staff, and to evaluate the recommendations resulting from these sessions. As a result of this public-private effort, the Department was unable to make the final revisions to the application submission package prior to the OMB expiration date.

Based on our previous years' experience, the Department receives far

more applications than available resources can fund. In Fiscal Year (FY) 1994, the Department received 383 applications requesting some 5,037 units of housing and could only select for funding 222 applications for some 2,783 units of housing.

Because the Department has continued to reduce program requirements at the fund reservation stage and because the program provides for capital advances (in lieu of loans), the Section 811 program is expected to attract more nonprofit organizations. It is anticipated that the number of applications received will exceed those received in FY 1994. In view of the highly competitive nature of the Section 811 program, it is necessary to have the response comply with prescribed application requirements in order to form a basis for HUD's evaluation in selecting applications.

The application submission requirements, summarized below, were developed after much consultation with the professionals in the field of providing housing for persons with disabilities and were intended to not only reduce the paperwork burden to the nonprofit applicants but to minimize their front-end expenditures in putting together an application package. This is important because only a small percentage of the universe of applications received ultimately are funded.

**Contents of Application Package**

The contents of the Application for a Section 811 Fund Reservation have been reorganized and reduced from five parts and 24 exhibits to four parts and 11 exhibits. Included with the 11 exhibits are six prescribed forms; five are required and one is optional.

There are 17 certifications in the application package. Twelve of the certifications have been combined into

a single document as a convenience to the applicant. The four components of the application submission package are:

Part 1—Application for Section 811

Supportive Housing—Capital Advance

Part 2—Sponsor's Ability to Develop and Operate the Proposed Project

Part 3—Need for Supportive Housing for Persons with Disabilities in the Area to be Served, Extent to Which

Sponsor has Site Control, Suitability of Site, and the Design of the Project

Part 4—General Application Requirements and Certifications

All of the required application exhibits are specifically identified in Section 890.265(b) of the Section 811 regulations, as amended.

2. The Section 811 application submission requirements are necessary to assist HUD in determining an applicant's eligibility and capacity to develop housing for persons with disabilities consistent with prescribed statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical in protecting the Federal Government's financial interest and to mitigate any possibility of fraud, waste or mismanagement of public funds.

The procedures for information collection requires the prospective applicant to submit its Section 811 application to the appropriate local HUD Office by the nationally established deadline date (usually between March and June). Local HUD Offices evaluate applications based on established criteria (identified in Section 890.300 of the regulations), rate the applications and make selection recommendations to Headquarters (usually by the first week of September). Applicants are notified of selection or nonselection generally by September 30. This process occurs once a year.

The purpose and use of the four components of the application exhibits are briefly described below:

(a) Part 1—Application for Section 811 Supportive Housing—Capital Advance

*Exhibit 1:* This exhibit requires applicants to submit Form HUD-92016-CA, Request for Section 811 Fund Reservation—Summary Information. This is a relatively new form which replaced Form HUD-92013, Application for Multifamily Housing Project, at the fund reservation stage. Form HUD-92016-CA was specifically designed to require the minimum information needed about the project for HUD review at this stage. The form identifies the applicant and its known development team members as well as

collects basic information with regard to the proposed project's characteristics. It is used by HUD staff to obtain basic information regarding the proposed project.

(b) Part 2—Sponsor's Ability to Develop and Operate the Proposed Project

*Exhibit 2:* This Exhibit requests the submission of organizational documents, IRS tax exemption ruling, and a Resolution, which also includes a listing of all officers and directors, concerning Conflict of Interest to assure that no officer or director has a financial interest in the project. It is important to note that not all applicants will have to submit all of the information asked for in this exhibit. Applicants who have received a Section 811 fund reservation within the last three funding cycles are not required to submit their organizational documents and IRS tax exemption rulings. Instead, these applicants must submit only the project numbers of their latest application and any modifications to these documents, if any.

*Exhibit 3:* This exhibit requests narrative descriptions of the applicant's community ties, experience in operating rental housing projects and its experience with programs other than housing such as the provision of services. This information includes the applicant's experience in serving persons with disabilities and minorities. This information will assist HUD in determining the applicant's over-all previous experience and capacity to operate the proposed project over an extended period of time. This is consistent with the statute which requires applicants to be selected on, among things, their ability to develop and operate the proposed housing.

In addition, the statute requires the Department to take action to ensure, among other things, that the supportive housing for persons with disabilities facilitates their access to the community at large and to suitable employment opportunities within such community. Also, the application must provide evidence of the applicant's (or designated service provider's) experience in providing supportive services as well as the extent to which State and/or local funds are available to assist in the provision of such supportive services. In order to assess the applicant's ability to carry out these statutory requirements, the applicant is required to submit a statement evidencing its ties to the community, including the disabled community and minorities, in which the proposed project is to be built as well as a

statement regarding its purposes and activities.

Under this part, the applicant also submits a narrative description of its contracting experience with minority and women-owned businesses pursuant to Executive Orders 11625, 12432 and 12138, as well as its efforts to involve persons with disabilities, in the development of the application and its intent to involve such persons in the development of the project.

Included in this exhibit is a certified Resolution from the applicant's Board acknowledging its responsibilities of sponsorship and long-term support of the project, along with its willingness to fund the minimum capital investment, estimated start-up expenses, and the cost of any amenities or features that cannot be covered by the capital advance.

It is important to note that many applicants will experience some relief of paperwork burden in preparing this exhibit because applicants that have participated in prior funding competitions will be able to utilize information and exhibits from previously prepared applications. Some examples include information regarding previous experience in the provision of housing and services, supportive services plan, community ties, and experience serving minorities.

(c) Part 3—Need for Supportive Housing for Persons With Disabilities in the Area To Be Served, Extent to Which Sponsor Has Site Control, Suitability of Site and the Design of the Project

*Exhibit 4:* This exhibit requires the applicant to (1) Identify the proposed population and evidence demonstrating demand for the project; (2) describe the project, including the building design and whether or not the design will promote energy efficiency, (3) submit a supportive services plan describing the supportive services needs, the manner in which the services will be delivered, sources of funds to cover the cost of services with a certification from the local entity that the services are well designed; (4) justify any request to exceed the project size limits; (5) provide information about the proposed site (including environmental condition of the site) with evidence of site control or at least identification of a site and proper zoning; and (6) submit a copy of Form HUD-92013E, Supplemental Application Processing Form (OMB 2502-0232) showing the services to be provided.

Information relative to the need for the housing, proposed residents, supportive services, and project design is necessary to determine (1) Whether

the applicant is proposing to serve an eligible population, whether the applicant accurately assessed the needs of the proposed residents, if the plan for the provision of services is sufficient and will meet the needs of the residents since supportive services are critical to the success of projects for the disabled; and (2) that a project of the type proposed will accommodate the needs of the disabled residents, will be compatible with and integrated into the surrounding neighborhood, is marketable, and that any increased number of persons to be served (above the administrative limitations) is necessary for the economic feasibility of the project.

Information relative to the site is evaluated to determine that the site is acceptable from an environmental and locational standpoint for the intended use and that the applicant has control of the site or has identified a site for which it feels it can gain control of within six months from the fund reservation, if selected. It also is reviewed to assure that proper zoning can be obtained. For sites identified but not under the applicant's control, the applicant provides a narrative description of the location and surrounding area which will assist HUD in determining the suitability of the site before the applicant purchases it.

Also, if an applicant proposes to develop and operate a group home to be licensed as an Intermediate Care Facility for persons with disabilities, then the applicant must provide additional information regarding its commitment for Medicaid funding along with a commitment that the State agency accepts responsibility to pay the tenant's contribution towards rent in the Medicaid payment. HUD reviews this information to assure that the group home (considering both services and building design) will operate as a housing facility rather than be medical in nature and that the residents will be enrolled in a structured program outside the home for a period of time.

Information with respect to the promotion of an agency efficient building design will be used to assist HUD in determining compliance with the energy efficiency standards in accordance with Section 109 of NAHA.

The information required under this exhibit is in accordance with Section 811 of the NAHA.

(d) Part 4—General Application Requirements and Certifications

*Exhibit 5:* To assist HUD in determining if the applicant is over-committed, the applicant submits for HUD's review a list of all Section 202

and Section 811 applications submitted for the current fiscal year funding round, and a list of projects previously funded which have not finally closed. This is information that an applicant that participated in a prior year can easily update, if necessary, and resubmit for the current year.

*Exhibit 6:* Form HUD-2880, Applicant/Recipient Disclosure/Update Report (OMB No. 2525-0101), is required by Section 102 of the HUD Reform Act of 1989. The applicant uses this form to disclose any other government assistance that may be provided in connection with the proposed project as well as to report its Social Security Numbers or Employee Identification Numbers. This information assists HUD to ensure that the applicant does not receive more assistance than is necessary to develop and operate the proposed project.

*Exhibit 7:* This exhibit is a certification, to be completed by the Section 202 applicant, that the application was submitted to the State for its review or that the State was contacted and it was determined that a State review was not required. This certification is required by OMB in accordance with Executive Order 12372.

*Exhibit 8:* This is a Guide Form, titled Project Data on Occupancy, Displacement and Real Property Acquisition (Form HUD-40087), and its use is *optional*. An applicant, at its option, may use the form to report information relative to the acquisition of property and the relocation or displacement of occupants in cases where the applicant proposes to acquire property which is occupied. This information is consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

In granting the previous approval to collect information under 2502-0462, OMB conditioned the approval on the correction of certain forms, one, of which, was Form HUD-40087. OMB specified that the Department must accurately reflect the burden in the disclosure statement. This form is exempt from the burden disclosure requirements because it is only a "guide" form to be used at the option of the applicant. It is only included in the application package as a convenience to the applicant. The applicant is not required to submit this form. The information regarding any relocation activities may be submitted in narrative form.

*Exhibit 9:* Information requested on Form SF-424, Application for Federal Assistance (OMB No. 0348-0043), serves a dual purpose. Pursuant to

Executive Order 12372, the applicant submits this form to the State which is used by the State to initiate the intergovernmental review process. The applicant also uses the form to certify that it is not delinquent on any Federal debt which is an OMB requirement.

*Exhibit 10:* The applicant provides the Form SF-LLL, Disclosure of Lobbying Activities (OMB No. 0348-0046), to indicate if other than federally appropriated funds have been or will be used to lobby the Executive or Legislative branches of the Federal Government pursuant to Title 31 U.S.C., Section 1352.

*Exhibit 11:* This exhibit represents the consolidation of the following 12 certifications into a single document, thereby requiring one signature for all. These certifications are required by governmental actions, Executive Orders, etc. and are used to review the applicant's intent to comply with the (1) Civil Rights, Fair Housing and Equal Opportunity laws; (2) Drug-Free Workplace Act; (3) HUD's design and cost standards including the Uniform Federal Accessibility Standards and Section 504 of the Rehabilitation Act of 1973; (4) acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; (5) requirement to form an Owner after issuance of the capital advance; (6) requirements of the Lead-Based Poisoning Prevention Act; (7) Davis-Bacon Act Provisions; (8) requirement that the project be consistent with the Consolidated Plan for the appropriate jurisdiction; (9) Flood Disaster Protection Act of 1973; (10) National Environmental Policy Act; (11) Anti-Lobbying Prohibition; and (12) requirement regarding the truth and accuracy of the information contained in the application.

Included in this exhibit also is a guide format for use by the public official responsible for developing the Consolidated Plan to indicate whether or not the proposed activities are consistent with the Consolidated Plan or the previous year's Comprehensive Housing Affordability Strategy (CHAS) if the Consolidated Plan has not yet started.

In the absence of collecting the above information, the Department would not be able to assess the worthiness of the applications, determine whether the facilities and services meet statutory and regulatory requirements, or make sound judgments regarding the potential risk to the Government.

3. Each fiscal year (near the beginning of the funding cycle), HUD issues a Notice pertaining to application

submission requirements. During this process, the Department reevaluates the application submission requirements to identify ways to reduce the burden to the applicants. Because the Section 811 program had changed drastically when it was converted to a capital advance program, the Department made major revisions to the application package at that time. More recently, in response to feedback from the professionals in the field of developing Section 811 housing, the Department made further major changes to streamline the program. This has resulted in less paperwork for the applicants. Therefore, in revising the application package, consideration was given to modifying it to require the minimum of information needed by HUD to conduct the program in accordance with the NAHA, statutory and regulatory requirements and, at the same time, to establish a selection system which is equitable to all participants.

The information described under Item 2 above represents the minimum information acceptable to HUD. Further, as mentioned in Item No. 2 above, many applicants will experience a tremendous relief from paperwork burden because they will not have to spend time preparing "new" information to complete an exhibit. In some cases, those applicants that have participated in this program in the past will be able to utilize previously submitted information.

4. No duplication exists, as there are no other forms or exhibits used for the purposes specified under Item 2 herein. Individual applications are evaluated and rated by HUD on the merits of the responses submitted with the application. Each application is unique. The information contained in each application relates to a particular applicant proposing a specific project, design, site, etc., and, as such, the information collected from applicants will be significantly different per application.

Also, the Department implemented a new requirement which relieves a previously funded applicant of the burden of submitting certain documents (e.g., the organization's Articles of Incorporation, By-Laws and IRS tax exemption ruling). Further, since FY 1991 when the program was converted to a capital advance program, HUD has been reviewing and modifying the application submission requirements to assure that only necessary information is being requested of applicants. HUD has taken into consideration suggestions made by the private sector in modifying the application submission requirements.

5. Due to the highly competitive nature of the Section 811 program, the application submission requirements were developed in a way to minimize the front-end cost to the nonprofit applicant and only require the minimum amount of information needed in HUD's evaluation. This is important due to the fact that only a small percentage of the universe of applications received ultimately get selected. For example, although applicants may still obtain the services of a housing consultant, information on the consultant is no longer required to be submitted at this stage. HUD review and approval of the consultant will be done at a later stage and only for those projects which are ultimately selected for funding.

Also, eliminated at the fund reservation stage is the submission of Form HUD-92530, regarding the applicant's previous participation in HUD programs and Form HUD-92013 Supplement, Supplement to Application for Multifamily Housing Project. The submission and review of these forms have been deferred to a subsequent processing stage. Applicants no longer have to submit sketches of the site plans which included typical unit and floor plans, making it unnecessary for an applicant to have to obtain input from an architect at this stage. Other major documents recently eliminated at this stage are the applicant's financial statements and a narrative description of the applicant's financial history. The elimination of these documents will result in a tremendous relief of paperwork burden to small and minority applicants.

The Department has consolidated several of the certification forms into a single document for the applicant's convenience.

Also, the Department has prepared sample Application Packages which include all the required forms and materials necessary to put together an Application Package. The sample Application Packages will be made available to all applicants well in advance of the deadline date for submission of applications.

Local HUD Offices are required to conduct workshops to provide needed guidance to applicants in preparing the application packages. In an effort to assist the small sponsoring organizations as well as first-time applicants, HUD staff also conducts pre-workshops especially designed for them.

In addition to the above, HUD recognizes that some applicants, who are sincerely interested in providing housing, may lack the staff and other

resources to develop such a project. Therefore, in recognition of the need for these applicants to use the services of professional housing consultants, HUD permits a reasonable fee for consultant's services to be included in the Section 811 capital advance. The consultant may assist the applicant in preparing the Application Package to request a Section 811 Capital Advance and throughout the final development of the project should the applicant be selected for funding.

6. Currently, the information collection activities occur annually to coincide with the receipt of annual fiscal year appropriations for the program. Each year, Congress appropriates funds with which to select new applications. HUD, in turn, invites applications and makes selections based on the funds available for the year. These funds are normally exhausted at the end of each fiscal year. The Section 811 regulations require HUD to publish a Notice of Fund Availability (NOFA) in the **Federal Register** when such funds are made available by Congress. The regulations also require HUD to specify a deadline date for receipt of applications. In order for HUD to accept an application, the application must have been submitted in response to a specific NOFA and Invitation requesting such an application and by the closing date stated in the Invitation. As the funding cycle for the program occurs annually, including the Invitations for Applications, it is not possible to require the submission of this information less frequently.

7. Part 5 CFR 1320.6 lists 10 items that OMB will not approve for information collection, unless it can be demonstrated that the collection of information is necessary to satisfy statutory requirements or other substantial need.

This request for information is consistent with the guidelines under 5 CFR 1320.6 with the exception of one item. Subparagraph (c) of the above CFR indicates OMB's disapproval of requiring respondents to submit more than an original and two copies of any document. HUD requires applicants to submit an original and four copies of the Section 811 Application. The changes to the application submission requirement resulted in a better organized Application Package. As the program is administered on an annual basis, processing of the application must be accomplished in an expeditious manner in order that decisions regarding selections of applications and reservations of funds can be made prior to the end of the fiscal year (September 30).

During the course of processing the applications, eight HUD technical disciplines are involved in the review process: staff from Valuation, Architectural and Engineering, Housing Management, Fair Housing and Equal Opportunity, Economic and Market Analysis, Community Planning and Development, the Multifamily Housing Representative and the Office Counsel. These HUD staff members are required to comment on the approvability of each application received.

Because of the (1) Various HUD staff involved in the review process, (2) tremendous volume of applications received each fiscal year, and (3) the commitment to obligate funds by the fiscal year-end, HUD requires concurrent reviews of the applications by the aforementioned HUD staff to assure prompt processing with minimum interruption. For example, additional information or clarification is often needed from applicants to permit HUD to make a fair and complete review. The requirement for simultaneous reviews promotes a more efficient, time-saving method to provide applicants a single notification regarding all deficiencies noted as a result of a full review from each HUD technical discipline.

HUD needs more than an original and two copies of the application in order to carry out the above procedures for concurrent reviews.

8. This OMB request is the result of on-going telephone conversations, meetings and workshops HUD staff recently held with Section 811 nonprofit Sponsors, housing consultants, disabled residents and potential residents, and other interested

HUD program staff. The Department consulted with various housing professionals representing the types of Sponsors that generally participate in the Section 811 program; i.e., minority organizations, small organizations and nonminority organizations. Following is a list of some of the housing professionals (Housing Consultants and Section 811 Sponsors) that HUD consulted with by telephone, meetings and/or workshop sessions:

- Judy Ponds, Housing Services, 1234—4th Street, SW, Washington, DC 20024, (202) 488-1639
- Nick Smyrnis, AHEPA Management Corp., 7202 N. Shadeland Ave., Indianapolis, IN, (317) 845-3410
- Sam Simmons, National Center on Black Aged, 1424 K Street, NW, Suite 500, Washington, DC 20005 (202) 637-8400
- Mark Olshan, B'nai B'rith, 1640 Rhode Island Avenue, NW, Washington, DC 20036, (202) 857-6580
- Alan Patricio, P.O. Box 53274, Atlanta, GA 30355, (404) 237-9877
- Joe Howell, 815—15th Street, NW, Washington, DC 20005, (202) 393-3044
- Randy Speaker, Bank IV Towers, 534 Kansas Avenue, Suite 910, Topeka, KS 66603, (913) 232-8338
- Jane Graf, Mercy Charities Housing, 1028A Howard Street, San Francisco, CA 94103, (415) 487-6825
- Harrison Joseph, Nat'l Baptist Convention, 338 Washington Street, Newark, OH 43005, (614) 258-7998
- Tom Slemmer, Nat'l Church Residences, 2335 N. Bank Drive, (614) 451-2151
- Don Redfoot, American Assn. for Retired Persons, 601 E Street, NW,

Washington, DC 20049, (202) 434-2277  
 Jose Fabregas, CODEC, Inc., 300 SW 12th St., Suite A, Miami, FL 33130, (305) 642-1361

Additionally, inasmuch as this OMB request is submitted in accordance with 24 CFR 890.265, as amended, the promulgation procedure for regulations allows sufficient participation by outside agency contacts to review and comment on the application materials.

9. HUD does not assure confidentiality.

10. The application submission requirements do not contain any sensitive questions.

11. *Provide estimates of annualized cost to the Federal Government and to the respondents.*

(a) *Estimate of Cost to Federal Government:* Inasmuch as the majority of the work involved in reviewing the applications is performed at the local HUD Office level, the significant costs attributable to the promulgation of the application requirements will be the cost involved in reviewing the information submitted by applicants. Outstanding program procedures require the following reviews performed by the various local HUD Office staff. The cost to the Federal Government is based on an average salary at the GS-12 level, except for the Office Counsel and the Clerical Assistant which is at the GS-14 and GS-7 levels, respectively. Also, included is the cost associated with the preparation and printing of the HUD Application Package for use by the applicants in putting together their individual Application Packages.

*Reviews*

HUD staff	Total time per application (hours)	Hourly rate	Total
Multifamily housing representative .....	3	\$22	\$66
Architectural .....	1	22	22
Valuation .....	3	22	66
Economic and market analysis .....	1	22	22
Fair housing and equal opportunity .....	1	22	22
Housing management .....	1	22	22
Community planning and development .....	1	22	22
Field office counsel .....	3	31	93
Clerical assistant .....	0.5	13	6.5
Total staff time—per application .....	14.5	.....	341.5
Total annual number of responses .....	.....	.....	*x400
Total annual staff time cost to government .....	.....	.....	136,600
Other Cost for All Applications:			
Printing/reproducing HUD application package (400 copies) .....	.....	.....	500
Postage (400 copies x \$3.00) .....	.....	.....	1,200
Multifamily clearinghouse (mailing services) .....	.....	.....	**5,000
Total other cost .....	.....	.....	6,700
Total estimated annual cost to government .....	.....	.....	143,300

\* See Item 12 below for an explanation.

\*\* The Department now utilizes the services of a Multifamily Clearinghouse to maintain a national mailing list for Section 811 Applications and to mail out the applications. Most applicants will receive their packages through the mail. However, some applicants will be handed copies of the Application Packages at the HUD-held workshops.

(b) *Estimate of Cost to Respondents:*  
 In estimating the cost to the applicants, it should be noted that in order to comply with the revised program requirements, the applicant may retain an attorney. In addition, as many nonprofit organizations do not have in-house expertise or staff to develop an application, a housing consultant is usually hired by the applicant. The applicant is a nonprofit organization and as such provides its services at no cost. In view of this, the following illustrates the estimated cost to the public:

Housing consultant (\$40 per hour) .....	\$1,076
Applicant (sponsor) .....	(**)
Attorney .....	1,000
<hr/>	
Total cost per respondent .....	\$2,076
Total annual number of responses .....	*×400
<hr/>	
Total estimated annual cost for all applicants ...	830,400

\* See Item 12 below for an explanation.  
 \*\* Probono.

This reflects a slight decrease in the cost per applicant from the previous OMB submission. Beginning this year, the Department is requiring the applicant to include as part of Exhibit 4 information about the environmental condition of the proposed site. An adjustment was made to take into consideration the additional time and cost that will be incurred by the applicant to inspect the proposed site for this purpose. Also, an adjustment was made to the burden hour time associated with Form HUD-92013E, Supplemental Application Processing Form—Housing for the Elderly, to comply with OMB's conditions for approval. However, these adjustments (increases) are offset by the reduction of burden hour time associated with the elimination of the financial documents.

It should be noted that many professionals work on a retainer basis and if the application does not obtain HUD approval, they do not collect a fee. The figures presented above are based on our own experience, as well as consultation with housing professionals in the field of housing persons with disabilities.

12. Although for Fiscal Year 1994 HUD received 383 Section 811 applications, it is anticipated that because the Department has further simplified the application submission requirements coupled with the fact that the program provides capital advances in lieu of loans, the number of applicants will slightly increase beyond the Fiscal Year 1994 level. It is anticipated that the level of activity will average 400 applications annually over the next three years. Although the program funding cycle is on an annual basis, each prospective applicant could submit more than one application. However, our estimate of time involved is based on one application per applicant.

To assist the applicant in putting together an Application for a Fund Reservation, the Department developed an Application Package consisting of the information, forms and materials needed by the applicant to assemble an application. The HUD Application Package, which will be made available to all applicants, is expected to aid in reducing the applicant's and housing consultant's time and effort in putting together an application.

Given the above and using the categories presented in the illustration in Item 11(b) above, the estimated amount of hours involved in developing a complete application submission is as follows:

	Hours
Housing consultant .....	26.9
Attorney .....	2.0
Applicant (sponsor) .....	12.3
<hr/>	<hr/>
Total .....	41.2

These figures are based on HUD's experience, as well as consultation with housing professionals in the field of housing persons with disabilities.

This reflects a decrease of 4 hours from the previous OMB submission (from 45.2 to 41.2 hours). This represents the net result of adjusting the burden time associated with Form HUD-92013E, the exhibit regarding project information to include an environmental review of the site by the applicant and the elimination of the applicant's financial documents.

A Tabulation of Annual Reporting Burden is shown in Table 1. It should be noted that Exhibits 4, 6, 9 and 10 already have OMB clearances as shown in the Table. These information collections are common to many of our programs and our request for clearance was calculated to include the burden associated for all program uses. The burden shown in Table 1 for Exhibits 4, 6, 9 and 10, therefore, reflects our estimate applicable to the Section 811 program. No adjustment to the previously cleared Exhibits 4, 6, 9 and 10 is required.

13. The primary reason for the increase of 1,160 in the total burden hours (from 13,800 to 14,960) is due to a projected increase in the total number of applicants expected to submit applications this fiscal year (from 350 to 400). Also, an adjustment was to reduce the applicant's burden time associated with the submission of financial documents since this requirement has been eliminated. A minor adjustment to the time reported for preparing Exhibit 4 was made to include additional time an applicant will need to perform an environmental inspection of the proposed site. In the past, most applicants would generally inspect the site to determine its acceptability for developing a project for persons with disabilities, which included inspecting it for potential environmental problems. However, because the Department is specifically requiring that an environmental inspection be performed, we have adjusted the applicant's burden time to include this function. Further, an adjustment was made to Form HUD-92013E to provide for the 8 hour burden time as reported in the disclosure statement on the form. Although there is a modest increase in the total burden hours for all applicants, the net effect of the above adjustments (which includes the reduction of time associated with the elimination of the financial documents) resulted in a slight reduction in the burden time per applicant.

15. Not applicable.

*B. Collections of Information Employing Statistical Methods*

Not applicable.

TABLE 1 - TABULATION OF ANNUAL REPORTING BURDEN

DESCRIPTION OF INFORMATION COLLECTION (APPLICATION SUBMISSION REQUIREMENTS) (2502-00462)	SECTION OF CFR AFFECTED	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES PER RESPONDENT	TOTAL ANNUAL RESPONSES	HOURS PER RESPONSE	TOTAL HOURS
PART 1: Exhibit 1, Form HUD-92016-CA (OMB 2502-0462)	890.265(b)(1)	400	1	400	1.0	400
PART 2: Exhibit 2, Evidence of Sponsor's Nonprofit Status	890.265(b)(2)	400	1	400	2.0	800
" Exhibit 3, Description of Purpose, Community Ties and Experience	890.265(b)(10)(11) (12)(13)(14)	400	1	400	8.0	3200
PART 3: Exhibit 4, Project Information Form HUD-92013E (OMB 2502-0232)	890.265(b)(5)(17)(18) (19)(20)(21)	400	1	400	20.9	8360
PART 4: Exhibit 5, Statement on Other 202 or 811 Applications Submitted and Funded Projects	890.265(b)(15)	400	1	400	2.0	800
" Exhibit 6, Form HUD-2880, Applicant Disclosure Report (OMB 2525-0101)	890.265(b)(16)	400	1	400	2.5	1000
" Exhibit 7, Certification on EO 12372	890.265(b)(4)	400	1	400	0.4	160
" Exhibit 8, Guide Form to Report Data on Project Displacement and Real Property Acquisition (Form HUD-40087)	890.265(b)(8)	20*	1	20	4.0	80

DESCRIPTION OF INFORMATION COLLECTION (APPLICATION SUBMISSION REQUIREMENTS) (2502-0462)	SECTION OF CFR AFFECTED	NUMBER OF RESPONDENTS	NUMBER OF RESPONDENTS PER RESPONDENT	TOTAL ANNUAL RESPONSES	HOURS PER RESPONSE	TOTAL HOURS
PART 4: Exhibit 9, Form SF-424, Application for Federal Assistance (OMB 0348-0043)		EXEMPT PER 5 CFR PART 1320				
" Exhibit 10, Form SF-LLL, Disclosure of Lobbying Activities (OMB 0348-0046)		EXEMPT PER 5 CFR PART 1320				
" Exhibit 11, Certifications (Includes Consolidated Plan Certification From Local Public Official)	890.265(b)(3)(9)	400	1	400	0.4	160
TOTALS		400	1	400	41.2	14,960

\* Based on experience, no more than 5 percent of the proposals will involve relocation.

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<b>PART I - APPLICATION FOR SECTION 811 SUPPORTIVE HOUSING - CAPITAL ADVANCE</b>	
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<b>PART II - SPONSOR'S ABILITY TO DEVELOP AND OPERATE THE PROPOSED PROJECT</b>	
EXHIBIT 2: Legal Status of each Nonprofit Sponsor:	
a. Articles of Incorporation, constitution (or other organizational documents)	_____
b. By-laws	_____
c. IRS Tax Exemption Ruling	_____
d. Conflict of Interest Resolution	_____
[EXCEPTION: SPONSORS WHO HAVE RECEIVED A SECTION 811 FUND RESERVATION WITHIN THE LAST THREE FUNDING CYCLES ARE NOT REQUIRED TO SUBMIT THE DOCUMENTS DESCRIBED IN (a), (b), and (c), ABOVE. INSTEAD, SPONSORS MUST SUBMIT THE PROJECT NUMBER OF THE LATEST APPLICATION SUBMITTED AND THE HUD OFFICE TO WHICH IT WAS SUBMITTED. IF THERE HAVE BEEN ANY MODIFICATIONS OR ADDITIONS TO THE SUBJECT DOCUMENTS, INDICATE SUCH, AND SUBMIT THE NEW MATERIAL.]	
e. The number of people on the Sponsor's board and the number of those people who have a disability	_____

**EXHIBIT 3: Sponsor's purpose, community ties and experience:**

- (a) Describe purpose and current activities \_\_\_\_\_
- (b) Describe ties to the community at large and to the disabled community \_\_\_\_\_
- (c) Describe housing and/or supportive services experience including any rental housing projects and/or medical facilities sponsored, owned and operated by the Sponsor; past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience in serving persons with disabilities and minorities \_\_\_\_\_
- (d) Describe experience in contracting with minority and women-owned businesses including a summary of the total amount awarded in each of the two categories for the preceding three years and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period \_\_\_\_\_
- (e) A certified Board Resolution (see attached) \_\_\_\_\_
- (f) Description, if applicable, of the Sponsor's efforts to involve persons with disabilities in the development of the application as well as its intent to involve persons with disabilities in the development of the project. \_\_\_\_\_

**PART III - THE NEED FOR SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES IN THE AREA TO BE SERVED, THE EXTENT TO WHICH THE SPONSOR HAS SITE CONTROL, SUITABILITY OF THE SITE, AND THE DESIGN OF THE PROJECT**

- EXHIBIT 4:
- (a) Evidence of need for supportive housing. \_\_\_\_\_
  - (b) Description of the project including the following:
    - (1) Number and type of structure(s), number of bedrooms if group home, number of units with bedroom distribution if independent living units (including condos), number of residents with disabilities and resident staff per structure. \_\_\_\_\_
    - (2) An identification of all community spaces, amenities or features planned for the housing \_\_\_\_\_
    - (3) Describe if and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction \_\_\_\_\_
  - (c) A supportive services plan that includes:
    - (1) A detailed description of whether the housing is intended to serve persons with physical, mental or emotional impairments, developmental disabilities, or chronic mental illness. \_\_\_\_\_
    - (2) A detailed description of the supportive service needs of the proposed population and the extent to which the supportive services will be needed. \_\_\_\_\_

- (3) The manner in which such services will be provided \_\_\_\_\_
- (4) If services will be organized or provided by the Sponsor, include the following:
- (i) the name(s) of the agency(s) (if other than the Sponsor) which will be responsible for providing the supportive services \_\_\_\_\_
  - (ii) the evidence of each service provider's capability and experience in providing such supportive services \_\_\_\_\_
  - (iii) description of how, when and how often, and where (on/off-site) the services will be provided \_\_\_\_\_
  - (iv) description of residential staff, if needed \_\_\_\_\_
  - (v) identification of the extent of State and local funds to assist in the provision of supportive services \_\_\_\_\_
  - (vi) letters of intent from service providers or funding sources \_\_\_\_\_
  - (vii) If any State or local government funds will be provided, a description of the State/local agency's philosophy/policy concerning residential facilities for the population to be served \_\_\_\_\_

- 
- (5) If the proposed residents will be taking responsibility for acquiring their own supportive services, provide a description of appropriate services in the community from which the residents can choose
- 
- (6) Assurances that the proposed residents will receive supportive services based on their individual needs and a commitment that accepting supportive services will not be a condition of occupancy
- 
- (7) Form HUD 92013E, Supplemental Application Processing Form - Housing for Persons with Disabilities. Identify all supportive services, if any, to be provided to the persons occupying such housing
- 
- (d) Supportive Services certification. A certification from the appropriate State or local agency identified in the application package that the provision of supportive services is well designed to serve the special needs of persons with disabilities, the necessary supportive services will be provided on a consistent, long-term basis, and the proposed facility is consistent with State or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category
-

(e) Evidence of control of an  
approvable site

1. Evidence of site control

- (i) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, \_\_\_\_\_
- (ii) Evidence that the project as proposed is permissible under applicable zoning ordinances \_\_\_\_\_
- (iii) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that impacts on the suitability of the site for persons with disabilities \_\_\_\_\_
- (iv) If acquisition, evidence that the structure has been constructed or occupied for at least three years (other than RTC properties); \_\_\_\_\_
- (v) statement regarding willingness to seek alternate site \_\_\_\_\_
- (vi) map showing the location of the site and the racial composition of the neighborhood \_\_\_\_\_

- (vii) Transaction Screen Process  
and Phase I Environmental  
Site Assessment \_\_\_\_\_
- (viii) If an exception of the  
project size limits is  
being requested, describe  
why the site was selected  
and demonstrate the following:
- (A) The increased number  
of people is necessary  
for the economic  
feasibility of the  
project \_\_\_\_\_
- (B) The project is compatible  
with other residential  
development and the  
population density  
of the area in which  
the project is to be  
located \_\_\_\_\_
- (C) The increased number of  
people will not prohibit  
their successful  
integration into  
the community \_\_\_\_\_
- (D) The project is  
marketable in  
the community \_\_\_\_\_
- (E) The size of the project  
is consistent with State  
and/or local policies  
governing similar  
facilities for the  
proposed population \_\_\_\_\_
- (F) A statement regarding  
willingness to  
have the application  
processed at the  
project size limit  
should HUD not approve  
the exception \_\_\_\_\_

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## 2. Identification of site

- (i) A description of the location of the site, including its street address and unit number \_\_\_\_\_
- (ii) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site \_\_\_\_\_
- (iii) An indication as to whether the site is properly zoned \_\_\_\_\_
- (iv) A status of the sale of the site \_\_\_\_\_
- (v) An indication as to whether the site would involve relocation \_\_\_\_\_
- (f) Statements of support for the proposed project from nongovernmental organizations familiar with the needs of the population it would serve, sources of local funds to serve project, minority support \_\_\_\_\_
- (g) For group homes to be licensed as intermediate care facilities:
  - (1) evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, and is or will be licensed by appropriate State agencies \_\_\_\_\_

- (2) description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site \_\_\_\_\_
- (3) description of the services that will be funded by Medicaid \_\_\_\_\_
- (4) description of any special design features proposed \_\_\_\_\_
- (5) written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Owner \_\_\_\_\_
- (6) statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each work day \_\_\_\_\_

**PART IV - GENERAL APPLICATION REQUIREMENTS/CERTIFICATIONS**

EXHIBIT 5. A list of applications submitted under the current Section 811 or Section 202 NOFAs and a list of all funded projects which have not been finally closed \_\_\_\_\_

EXHIBIT 6. HUD-2880, Applicant/Recipient Disclosure/Update Report including Social Security Numbers and Employee Identification Numbers \_\_\_\_\_

EXHIBIT 7: E.O. 12372 \_\_\_\_\_

- EXHIBIT 8:       FORM HUD-40087, Project Data  
                  on Occupancy, Displacement and  
                  Real Property Acquisition,  
                  including a description of  
                  persons, businesses and  
                  organizations by race/minority  
                  group \_\_\_\_\_
  
- EXHIBIT 9:       Standard Form 424 \_\_\_\_\_
  
- EXHIBIT 10:     Standard Form LLL, Disclosure of  
                  Lobbying Activities, if applicable \_\_\_\_\_
  
- EXHIBIT 11:     Sponsor Certifications \_\_\_\_\_

**Supportive Housing for Persons with Disabilities  
Section 811  
Application for Capital Advance  
Summary Information**

**U.S. Department of Housing  
and Urban Development**  
Office of Housing  
Federal Housing Commissioner

EXHIBIT 1

OMB Approval No. 2502-0462(exp.12/31/94)

**Public Reporting Burden** for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0462), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

**HUD Use Only** | HUD Project Number: \_\_\_\_\_ | PRAC Number: \_\_\_\_\_

1. Name(s), Address(es), Contact Person, & Telephone Number(s) of Sponsor(s): \_\_\_\_\_

2. Minority Sponsor Designation: A minority sponsor is one in which at least 51 percent of the board members are minority.  
Is this sponsor a minority applicant?  
 Yes  No **Codes:**  
2-Black; 3-Native American;  
4-Hispanic; 5-Asian Pacific;  
6-Asian Indian; 7-Hasidic Jewish  
If yes, identify by numeric code as shown at left:

3a. Location of Site: (city & state) \_\_\_\_\_

3b. Will project be located within the boundaries of a Federally designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community or Urban Enhanced Enterprise Community?  
 Yes  No  
If yes, name zone/community? \_\_\_\_\_  
Contact local HUD office to determine boundaries of zones/communities.

4. Congressional District: \_\_\_\_\_

5. Capital Advance Amount Requested: \$ \_\_\_\_\_

6. Project Rental Assistance Contract Amount Requested: \$ \_\_\_\_\_

7. Application Contains:  
 Evidence of Site Control  
 Identification of Site

8. Type of Construction:  
 New Construction  
 Rehabilitation  
 Acquisition (GH or RTC)

9. Occupancy Type:  
 Physically Disabled  
 Developmentally Disabled  
 Chronically Mentally Ill

10. Facility Type & Number of Units/Residents Proposed:

**a. Group Homes:**

Site	Intermediate Care Facility (Y/N)	No. of Disabled Residents	Resident Mgr. Unit (Y/N)	Address
#1				
#2				
#3				
#4				

**b. Independent Living Facilities:**

Site	Units by No. of Bedrooms				Total Disabled		Resident Mgr. Unit (Y/N)	Total Units	Address
	0	1	2	3	Units	Residents			
#1									
#2									
#3									
#4									

**c. Condominiums:**

No. of Bldgs.	Units by No. of Bedrooms				Total Disabled		Resident Mgr. Unit (Y/N)	Total Units	Address
	0	1	2	3	Units	Residents			
#1									
#2									
#3									
#4									

\*NOTE: If an elevator structure in b or c above, indicate by placing an "E" next to the total number of units for each applicable site.

Totals:

_____	Units
_____	Disabled Residents
_____	Sites

(Note: If project will be a group home(s), include the number of disabled residents in both the "Total Units" and the "Total Disabled Residents" categories. If project will be an independent living facility(s), include Resident Manager unit, if applicable, in the "Total Units" category.

<p>11. Check utilities and services not included in the rent and to be paid directly by the tenant:</p> <p><input type="checkbox"/> Electric</p> <p><input type="checkbox"/> Water</p> <p><input type="checkbox"/> Heat</p> <p><input type="checkbox"/> Gas</p>	<p>12. HUD Headquarters approval required for: (check if applicable)</p> <p><input type="checkbox"/> Restricted occupancy</p> <p><input type="checkbox"/> Mixed Occupancy</p> <p><input type="checkbox"/> Group home to be licensed as intermediate care facility</p>	<p>13. Unusual Site Features:</p> <table border="0"> <tr> <td><input type="checkbox"/> None</td> <td><input type="checkbox"/> Poor Drainage</td> </tr> <tr> <td><input type="checkbox"/> Cuts</td> <td><input type="checkbox"/> Retaining Walls</td> </tr> <tr> <td><input type="checkbox"/> Fill</td> <td><input type="checkbox"/> Rock Foundations</td> </tr> <tr> <td><input type="checkbox"/> Erosion</td> <td><input type="checkbox"/> High Water Table</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Other (specify)</td> </tr> </table>	<input type="checkbox"/> None	<input type="checkbox"/> Poor Drainage	<input type="checkbox"/> Cuts	<input type="checkbox"/> Retaining Walls	<input type="checkbox"/> Fill	<input type="checkbox"/> Rock Foundations	<input type="checkbox"/> Erosion	<input type="checkbox"/> High Water Table	<input type="checkbox"/> Other (specify)	
<input type="checkbox"/> None	<input type="checkbox"/> Poor Drainage											
<input type="checkbox"/> Cuts	<input type="checkbox"/> Retaining Walls											
<input type="checkbox"/> Fill	<input type="checkbox"/> Rock Foundations											
<input type="checkbox"/> Erosion	<input type="checkbox"/> High Water Table											
<input type="checkbox"/> Other (specify)												

<p>14. Off-Site Facilities:</p> <table border="0"> <thead> <tr> <th></th> <th>Public</th> <th>At Site</th> <th>Ft. from Site</th> </tr> </thead> <tbody> <tr> <td>Water</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>_____</td> </tr> <tr> <td>Sewer</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>_____</td> </tr> <tr> <td>Paving</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>_____</td> </tr> <tr> <td>Gas</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>_____</td> </tr> <tr> <td>Electric</td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td>_____</td> </tr> </tbody> </table>		Public	At Site	Ft. from Site	Water	<input type="checkbox"/>	<input type="checkbox"/>	_____	Sewer	<input type="checkbox"/>	<input type="checkbox"/>	_____	Paving	<input type="checkbox"/>	<input type="checkbox"/>	_____	Gas	<input type="checkbox"/>	<input type="checkbox"/>	_____	Electric	<input type="checkbox"/>	<input type="checkbox"/>	_____	<p>15. Community Facilities to be Included in Project: (identified by site no. indicated in 10 above):</p>
	Public	At Site	Ft. from Site																						
Water	<input type="checkbox"/>	<input type="checkbox"/>	_____																						
Sewer	<input type="checkbox"/>	<input type="checkbox"/>	_____																						
Paving	<input type="checkbox"/>	<input type="checkbox"/>	_____																						
Gas	<input type="checkbox"/>	<input type="checkbox"/>	_____																						
Electric	<input type="checkbox"/>	<input type="checkbox"/>	_____																						

16. Name, Address & Telephone Number of: (mark one box)

Consultant

Agent

Authorized Representative

17. Sponsor's Attorney: (name, address & telephone number)

By: (signature of sponsor's authorized representative)

X

Type In Name & Title:

**Supplemental Application and Processing Form Housing For The Elderly/Disabled**

U.S. Department of Housing and Urban Development  
Office of Housing  
Federal Housing Commissioner

EXHIBIT 4(c)(7)

OMB Approval No. 2502-0232 (exp. 11/30/95)

See Instructions on pages 2 & 3

Project Name _____				<input type="checkbox"/> Congregate <input type="checkbox"/> Mixed <input type="checkbox"/> Non-Congregate		Project Number _____	
<b>A. Non-Rent Congregate Living Space</b>				<b>E. Health Service</b>		<b>Annual Expense</b>	
1. Congregate Kitchen and Dining _____				1. Nursing Payroll		Sponsor    HUD	
2. Lobbies _____				Number of Nurses _____			
3. Community Room _____				x salary \$ _____		\$ _____ \$ _____	
4. Hobby Shop _____				2. Equipment Expense:			
5. Infirmary or Health Facility _____				a. Repl. Res: 10% x			
6. Other _____				Equipment Cost \$ _____		\$ _____ \$ _____	
7. Other _____				b. Int. on Inv.: _____%			
8. Total Square Feet _____				Int. Rate x Cost \$ _____		\$ _____ \$ _____	
<b>B. Project Composition</b>				c. Maintenance and Repairs		\$ _____ \$ _____	
1. Number of Bedrooms	2. Total No. of Units	3. No. of Units With Kitchens	4. No. of Units with Kitchenettes	3. Medical Supplies		\$ _____ \$ _____	
0-Bedroom Units				4. Utilities		\$ _____ \$ _____	
1-Bedroom Units				5. Laundry Service		\$ _____ \$ _____	
2-Bedroom Units				6. Other (Specify)		\$ _____ \$ _____	
				7. Total Health Service		\$ _____ \$ _____	
				8a. No. of Beds In Infirmary _____			
				8b. No. of Persons Served _____			
				9. Proposed Charge per Mo. per Patient _____ per Person _____		\$ _____ \$ _____	
<b>C. Food Service</b>				<b>Annual Expense</b>		<b>Annual Expense</b>	
1. Payroll				Sponsor    HUD		Sponsor    HUD	
Number of cooks _____							
x salary \$ _____				\$ _____ \$ _____		\$ _____ \$ _____	
Number of waitresses _____							
x salary \$ _____				\$ _____ \$ _____		\$ _____ \$ _____	
Number of helpers _____							
x salary \$ _____				\$ _____ \$ _____		\$ _____ \$ _____	
2. Food Cost				\$ _____ \$ _____		\$ _____ \$ _____	
3. Supplies				\$ _____ \$ _____		\$ _____ \$ _____	
4. Dining Room Furniture Exp.							
a. Repl. Res: 10% x Equip. Cost \$ _____				\$ _____ \$ _____		\$ _____ \$ _____	
b. Int. on Inv: _____%							
Int. Rate x Cost \$ _____				\$ _____ \$ _____		\$ _____ \$ _____	
c. Maintenance and Repairs				\$ _____ \$ _____		\$ _____ \$ _____	
5. Other (Specify)				\$ _____ \$ _____		\$ _____ \$ _____	
6. Other (Specify)				\$ _____ \$ _____		\$ _____ \$ _____	
7. Total Food Service Expense				\$ _____ \$ _____		\$ _____ \$ _____	
8. Average No. of Persons Served _____							
9. Proposed Charge per Person per Month				\$ _____ \$ _____		\$ _____ \$ _____	
10. No. of Meals per Person per Day _____							
<b>D. Maid Service</b>				<b>Annual Expense</b>		<b>Annual Expense</b>	
1. Payroll				Sponsor    HUD		Sponsor    HUD	
Number of maids _____							
x salary \$ _____				\$ _____ \$ _____		\$ _____ \$ _____	
2. Supplies				\$ _____ \$ _____		\$ _____ \$ _____	
3. Other (Specify)				\$ _____ \$ _____		\$ _____ \$ _____	
4. Other (Specify)				\$ _____ \$ _____		\$ _____ \$ _____	
5. Total Maid Service				\$ _____ \$ _____		\$ _____ \$ _____	
6. Average Number of Units Using Service _____				\$ _____ \$ _____		\$ _____ \$ _____	
7. Proposed Charge per Unit per Month				\$ _____ \$ _____		\$ _____ \$ _____	
<b>H. Remarks &amp; Signatures</b>				<b>Official Use Only</b>			
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)							
The above estimates in "Sponsor" column for Sections C through G represent estimates of income and expense in non-shelter budgets.							
Signed _____		Date _____		<input type="checkbox"/> Sponsor, <input type="checkbox"/> Mortgagor, <input type="checkbox"/> Borrower, <input type="checkbox"/> Owner			
Valuation Processor _____		Date _____		Reviewer _____		Date _____	

**Public reporting burden** for this collection of information is estimated to average 8.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0232), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

## Instructions

### General

Form HUD-92013E must accompany form HUD-92013, Application-Project Mortgage Insurance, for each project intended to provide housing for the elderly or the disabled.

Preparation of the forms HUD-92013 and HUD-92013E must separate the budget for shelter (and utilities included in the rent) from other budgets concerned with supplying services other than shelter, such as food service, main service, program and recreation service, rented furniture, and any other non-shelter services which may be planned. The non-shelter budgets concerned with supplying food, furniture, maid service, and other personal services are shown on the form HUD-92013E.

All non-shelter services and amenities offered with a charge to the tenant and as a condition of occupancy must be identified on this form. Special circumstances regarding items to be included in an amenity package such as additional charges for additional persons that cannot be readily shown on this form must be explained on an addendum sheet to the form HUD-92013E.

Form HUD-92013E must accompany all requests for feasibility analysis, conditional and firm commitments.

### Definitions

An elderly person is defined as one who is age 62 or over. A disabled person is one whose impairment (a) is expected to be of continued and indefinite duration; (b) substantially impedes his ability to live independently; and (c) is such that his ability to live independently could be improved by more suitable housing. (See appropriate program regulations for more detailed definitions.)

Congregate Housing is designed for persons, normally well and ambulatory, who prefer residential accommodations but need some assistance in day-to-day living. While not a nursing or medical facility, it offers services that protect residents and provide for their needs.

Congregate housing projects have a central dining room generally serving three meals a day, with emergency room service available. There are common areas for lounges, recreation, special activities; limited housekeeping and laundry services may be provided. Some projects have an infirmary with personnel qualified to control and administer medications.

### Instructions

Projects having congregate dining facilities with only kitchenettes in the living units, are checked in the box marked "Congregate." Projects having no congregate dining facilities, but having full sized kitchens in the living units are checked in the box marked "Non-Congregate." Projects having congregate dining facilities and having some living units with complete sized kitchens, are checked in the box marked, "Mixed."

#### Section A. Non-Rent Congregate Living Space Areas

Enter the net area, in square feet, for various kinds of non-rent congregate living space shown, such as, congregate kitchen and dining, lobbies, community rooms, hobby shop, infirmaries, or other non-rented common buildings area. When plans are available, these net areas should be calculated from the plans. Congregate dining facilities should be large enough to serve the probable total number of diners within a single meal period, but not necessarily at a single sitting. The number of diners shall be estimated to include all of the occupants of the units having kitchenettes only, plus a reasonable portion of the occupants of units with full kitchens.

#### Section B. Project Composition

For each number of bedrooms enter in Column 2 the total number of units. In Column 3, enter the number of units with complete kitchens. In Column 4, enter the number of units with kitchenettes only.

#### Non-Shelter Income and Expense Budgets.

Sections C through G contain budgets of income and expense for furnishing various non-shelter services. The sponsor enters his estimates of items of income and expense for each budget in the column headed "Sponsor," thus using form HUD-92013E as a supplemental application form. Subsequently, copies of the same form will be used as a processing form, with HUD personnel entering estimates in the Column headed, "HUD."

#### Section C. Food Service: Annual Expenses.

**Line C-1**—Estimate the number of cooks times the average annual salary. The number of waitresses, and other employees needed to operate the dining room are also estimated to arrive at payroll, including payroll tax. When the food service operation is large or complex, a detailed explanation of kinds of staff, numbers of employees, rates of pay, payroll tax, and total payroll for food service, should be shown in an attachment. The annual food cost and cost of supplies is also entered. **Line C-4a**—Dining room furniture expense includes an annual reserve for replacement of dining room furniture and equipment. Estimate the replacement reserve by multiplying furniture cost by 10%.

**Line C-4b**—Return on investment in dining room furniture and equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

**Line C-4c**—Enter the estimated annual allowance for maintenance and repairs to the furniture.

**Line C-7**—Show the total annual food service expense.

**Line C-8**—Estimate the probable number of tenants customarily using the congregate dining facility.

**Line C-9**—Enter the proposed charge per person per month for food service. This charge should be sufficient to provide an annual income at least 3% more than the total food service expense estimated in Line C-7. If a food service concessionaire is contemplated, the proposed terms of the concession shall be completely explained in an attachment.

**Line C-10**—Enter the number of meals per person per day covered by the proposed food service charge.

#### Section D. Maid Service: Annual Expense.

**Line D-1**—Enter the number of mains multiplied by the average annual salary to result in annual payroll.

**Line D-2**—Enter the annual expense for cleaning supplies.

**Line D-3 and 4**—If clean sheets are to be provided as part of this service, the word "Laundry" is entered after "other" followed by the annual amount of this expense. Enter other expenses of supplying maid service.

**Line D-5**—Enter the sum of Lines D-1 through D-4. This represents total maid service expense.

**Line D-6**—Enter the estimated number of units using this service.

**Line D-7**—Enter the proposed charge per unit to cover this service.

**Section E. Health Service: Annual Expense.**

**Line E-1**—Enter the anticipated number of nurses needed times the average salary including payroll tax. If the health service operation is large or complex, the sponsor should submit a more detailed estimate of health service payroll in an attachment.

**Line E-2**—Equipment expenses includes an annual reserve for replacement of beds and other furniture and equipment in the infirmary.

**Line E-2a**— Estimate the replacement reserve by multiplying equipment cost by 10%.

**Line E-2b**—Return on investment in equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

**Line E-2c**—Enter the estimated annual allowance for maintenance and repairs to the equipment.

**Line E-3, 4, 5, and 6**—Enter the annual amounts to be expended for medical supplies, utilities, laundry or linen service, and other expenses of the health service facility.

**Line E**—Enter the sum of lines E-1 through E-6. This represents total health service expense.

**Line E-8**— Enter the number of beds in the infirmary.

**Line E-9**—Enter the average number of patients in the infirmary.

**Line E-9**—Enter the proposed charge per patient or per person. Indicate method of payment.

**Section F. Furniture in Living Units.**

**Line F-1**—Indicate the amount of total annual payments to the leasing company when furniture for some or all of the living units is obtained by the mortgagor by leasing it.

**Line F-2a**—The renting of furniture by tenant must be optional and not a condition of occupancy. For those units in which the project owns the furniture, furniture expense includes an annual reserve for replacement of living unit furniture. Estimate the replacement reserve by multiplying furniture cost by 10%.

**Line F-2b**—Return on investment in furniture is estimated by multiplying furniture cost by the market interest rate for similar investments.

**Line F-2**—Enter the estimated annual allowance for maintenance and repairs to the furniture.

**Line F-3**—Enter the Total Furniture Expense.

**Line F-4**—Indicate the number of units furnished by the mortgagor.

**Line F-5**—Enter the proposed charge per unit per month to cover the furniture expense.

**Section G. Other Non-Shelter Services**

**Line G-1**—Enter the salaries of persons employed to furnish guidance and recreation during the leisure time of the resident's occupancy in the project.

**Lines G-2 and G-3**—Enter the amounts covering any other service or facility included in the proposal that would contribute to the health, comfort and recreation of elderly persons, and specify.

**Lines G-4, 5 and 6**—Enter the charges per person or unit for the respective service of facility.

**Section H. Remarks and Signatures**

Self Explanatory.

**Applicant/Recipient  
Disclosure/Update Report**

U.S. Department of Housing  
and Urban Development  
Office of Ethics

EXHIBIT 6

OMB Approval No. 2535-0101 (exp. ~~12/31/94~~ <sup>03/31/98</sup>)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

**Part I Applicant/Recipient Information** Indicate whether this is an Initial Report  or an Update Report

1. Applicant/Recipient Name, Address, and Phone (include area code)	Social Security Number or Employer ID Number
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2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received \$
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**Part II. Threshold Determinations – Applicants Only**

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of \$200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted?  Yes  No

If Yes, you must complete the remainder of this report.  
If No, you must sign the certification below and answer the next question.  
I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

2. Is this application for a specific housing project that involves other government assistance?  Yes  No

If Yes, you must complete the remainder of this report.  
If No, you must sign this certification.  
I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

**Part III. Other Government Assistance Provided/Requested**

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V?  Yes  No

If there is no other government assistance, you must certify that this information is true.  
I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

**Part IV. Interested Parties**

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)

Social Security Number or Employee ID Number

Type of Participation in Project/Activity

Financial Interest in Project/Activity (\$ and %)



If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

**Part V. Report on Expected Sources and Uses of Funds**

**Source**

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

**Use**

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

**Certification**

**Warning:** If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation.

I certify that this information is true and complete.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Public reporting burden** for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

**Privacy Act Statement.** Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, 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. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

**Note:** This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

**Instructions** (See Note 1 on last page.)

**I. Overview.** Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

**A. Applicant disclosure (Initial) reports: General.** All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

- Assistance from other government sources in connection with the project,
- The financial interests of persons in the project,
- The sources of funds to be made available for the project, and
- The uses to which the funds are to be put.

**B. Update reports: General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

**C. Applicant disclosure reports: Specific guidance.** The applicant must complete all parts of this disclosure form if either of the following two circumstances in paragraph 1. or 2., below, applies:

1.a. **Nature of Assistance.** The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; and

b. **Dollar Threshold.** The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of \$200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) **Note:** There is no dollar threshold for this criterion: any other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

**D. Update reports: Specific guidance.** During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by \$250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by \$50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:
- a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by \$250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by \$250,000 or by 10 percent of those uses (whichever is lower).

- b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by \$250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by \$250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

- c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by \$250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by \$250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

## II. Line-by-Line Instructions.

### A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.
3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

### B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions 1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

### C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.
2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.
3. State the type of other government assistance (e.g., loan, grant, loan insurance).
4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

#### D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

- (1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
- (2) any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures referred to in Section I.D.1., 2., or 4, above.

**Note:** A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest. The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

**5. Part V. Report on Sources and Uses of Funds.** This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds—both from HUD and from any other source—that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

#### General Instructions — sources of funds

Each reportable source of funds must indicate:

- a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.
- b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.
- c. The type of assistance (e.g., loan, grant, loan insurance).

#### Specific instructions — sources of funds.

- (1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.
- (2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.
- (3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

#### General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

#### Specific instructions -- uses of funds.

- (1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

**AMPO**

Architect's fee — design  
 Architect's fee — supervision  
 Bond premium  
 Builder's general overhead  
 Builder's profit  
 Construction interest  
 Consultant fee  
 Contingency Reserve  
 Cost certification audit fee  
 FHA examination fee  
 FHA inspection fee  
 FHA MIP  
 Financing fee  
 FNMA / GNMA fee  
 General requirements  
 Insurance  
 Legal — construction  
 Legal — organization  
 Other fees  
 Purchase price  
 Supplemental management fund  
 Taxes  
 Title and recording  
 Operating deficit reserve  
 Resident initiative fund  
 Syndication expenses  
 Working capital reserve  
 Total land improvement  
 Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses  
 Bridge loan interest  
 Development fee  
 Operating deficit reserve  
 Resident initiative fund  
 Syndication expenses  
 Working capital reserve

**Footnotes:**

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated periodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

**Project Data On Occupancy, Displacement and Real Property Acquisition**

**U.S. Department of Housing and Urban Development**  
Office of Community Planning and Development

Note: This information (which may be included in other HUD forms) will assist HUD Community Planning and Development (CPD) staff in reviewing the application for a project and in determining technical assistance needs and monitoring requirements to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and related program requirements. All projects for which real property will be acquired (or was recently acquired) and all projects involving property that is occupied (or was recently occupied) must be reviewed, whether the occupants are required to relocate permanently or have been notified that they will be permitted to remain on-site. Questions about the URA and requests for training or technical assistance should be addressed to the HUD CPD Relocation/Realty Specialist in the Field Office administering the URA for the area in which the project is located.

**General Project Information**

1. Applicant Name and Address (Street, City, State and zip code)	2. Program/Project No., Name and Address (Street, City, State and zip code)
3. Has site control been secured? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain how.	

**Project Occupancy and Relocation** (Determine occupancy at the time of submission of application or date site identified, if later)

	No. of Units in Property	Units Occupied		Occupants to Move Permanently	Occupants to Remain	
		Owner	Tenant		Total	No. to be Temporarily Relocated
4. Residential						
5. Nonresidential						

6. Has anyone been forced to move from the site in the past 12 months? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown If Yes, explain.	
7. Estimated cost of relocation: \$	8. Source of funding
9. Agency administering relocation	10. Contact person (Name) Telephone Number (include area code)
11. Description of relocation experience	

**Acquisition of Real Property**

12. Estimated cost of acquisition: \$	13. Source of funding	14. Number of parcels: Residential Nonresidential
15. Name of acquiring entity:	16. Contact Person (Name)	Telephone Number (include area code)

Remarks:

Completed by: (Name, title and organization)	Telephone Number (include area code)	Date
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# Application for Federal Assistance

EXHIBIT 9

OMB Approval No. 0348-0043

	2. Date Submitted	Applicant Identifier
1. Type of Submission: <b>Application</b> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction <b>Preapplication</b> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction	3. Date Received by State	State Application Identifier
	4. Date Received by Federal Agency	Federal Identifier

**5. Applicant Information**

Legal Name	Organizational Unit
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Address (give city, county, State, and zip code):	Name, telephone number, and facsimile number of the person to be contacted on matters involving this application (give area codes)
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<p>6. Employer Identification Number (EIN):</p> <table style="border: 1px solid black; width: 100%; height: 20px;"> <tr> <td style="width: 25%;"> </td> <td style="width: 25%;"> </td> <td style="width: 25%;"> </td> <td style="width: 25%;"> </td> </tr> </table>					<p>7. Type of Applicant: (enter appropriate letter in box) <input type="checkbox"/></p> <table style="width: 100%;"> <tr> <td>A. State</td> <td>H. Independent School Dist.</td> </tr> <tr> <td>B. County</td> <td>I. State Controlled Institution of Higher Learning</td> </tr> <tr> <td>C. Municipal</td> <td>J. Private University</td> </tr> <tr> <td>D. Township</td> <td>K. Indian Tribe</td> </tr> <tr> <td>E. Interstate</td> <td>L. Individual</td> </tr> <tr> <td>F. Intermunicipal</td> <td>M. Profit Organization</td> </tr> <tr> <td>G. Special District</td> <td>N. Other (Specify):</td> </tr> </table>	A. State	H. Independent School Dist.	B. County	I. State Controlled Institution of Higher Learning	C. Municipal	J. Private University	D. Township	K. Indian Tribe	E. Interstate	L. Individual	F. Intermunicipal	M. Profit Organization	G. Special District	N. Other (Specify):
A. State	H. Independent School Dist.																		
B. County	I. State Controlled Institution of Higher Learning																		
C. Municipal	J. Private University																		
D. Township	K. Indian Tribe																		
E. Interstate	L. Individual																		
F. Intermunicipal	M. Profit Organization																		
G. Special District	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):

<p>9. Name of Federal Agency:</p>	<p>11. Descriptive Title of Applicant's Project:</p>
-----------------------------------	--

<p>10. Catalog of Federal Domestic Assistance Number:</p> <p>Title:    <table style="border: 1px solid black; width: 100%; height: 20px;"><tr><td> </td><td> </td><td> </td><td> </td></tr></table></p>					<p>12. Areas Affected by Project (cities, counties, States, etc.):</p>

<p>13. Proposed Project:</p> <table style="width: 100%;"> <tr> <td style="width: 50%;">Start Date</td> <td style="width: 50%;">Ending Date</td> </tr> </table>	Start Date	Ending Date	<p>14. Congressional Districts of:</p> <table style="width: 100%;"> <tr> <td style="width: 50%;">a. Applicant</td> <td style="width: 50%;">b. Project</td> </tr> </table>	a. Applicant	b. Project
Start Date	Ending Date				
a. Applicant	b. Project				

<p>15. Estimated Funding:</p> <table style="width: 100%;"> <tr> <td style="width: 20%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%;">.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td>.00</td> </tr> <tr> <td>g. Total</td> <td>\$</td> <td>.00</td> </tr> </table>	a. Federal	\$	.00	b. Applicant	\$	.00	c. State	\$	.00	d. Local	\$	.00	e. Other	\$	.00	f. Program Income	\$	.00	g. Total	\$	.00	<p>16. Is Application Subject to Review by State Executive Order 12372 Process?</p> <p>a. Yes This preapplication/application was made available to the State Executive Order 12372 Process for review on: _____ Date: _____</p> <p>b. No <input type="checkbox"/> Program is not covered by E.O. 12372          or <input type="checkbox"/> Program has not been selected by State for review.</p> <p>17. Is the Applicant Delinquent on Any Federal Debt?  <input type="checkbox"/> Yes If "Yes," explain below or attach an explanation    <input type="checkbox"/> No</p>
a. Federal	\$	.00																				
b. Applicant	\$	.00																				
c. State	\$	.00																				
d. Local	\$	.00																				
e. Other	\$	.00																				
f. Program Income	\$	.00																				
g. Total	\$	.00																				

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	

**Instructions for the SF-424**

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, D.C. 20503. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

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 | Entry  | Item | Entry   |
|------|--|------|---|
| 1.   | Self-explanatory.  | 12.  | List only the largest political entities affected (e.g., State, counties, cities).  |
| 2.   | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).  | 13.  | Self-explanatory.   |
| 3.   | State use only (if applicable).  | 14.  | List the applicant's Congressional District and any District(s) affected by the program or project.   |
| 14.  | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 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. |
| 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.   | 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.   |
| 6.   | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 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.   |
| 7.   | Enter the appropriate letter in the space provided.  | 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.)   |
| 8.   | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br><ul style="list-style-type: none"> <li>- "New" means a new assistance award.</li> <li>- "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.</li> <li>- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.</li> </ul> |      |   |
| 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.  |      |   |

Disclosure of Lobbying Activities

EXHIBIT 10

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 (See reverse side for Instructions and public burden disclosure.)

Approved by OMB 0348-0046

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
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<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known: _____	<b>5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:</b>  Congressional District, if known: _____
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<b>6. Federal Department/Agency:</b> _____	<b>7. Federal Program Name/Description:</b> _____  CFDA Number, if applicable: _____
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<b>8. Federal Action Number, if known:</b> _____	<b>9. Award Amount, if known:</b> \$ _____
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<b>10a. Name and Address of Lobbying Entity</b> (if individual, last name, first name, MI): _____	<b>b. Individuals Performing Services</b> (including address if different from No. 10a.) (last name, first name, MI): _____
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(attach Continuation Sheet(s) SF-LLL-A, if necessary)

<b>11. Amount of Payment</b> (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment</b> (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____
<b>12. Form of Payment</b> (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____	

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

<b>15. Continuation Sheet(s) SF-LLL-A attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____
<b>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	

**Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient, include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).  
Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

**Public Reporting Burden** for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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Disclosure of Lobbying Activities  
Continuation Sheet

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Approved by OMB  
0348-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

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Authorized for Local Reproduction  
Standard Form-LLL-A

[Docket No. N-95-3909; FR-3904-N-02]

**Notice of Submission of Proposed Information Collection to OMB; Section 202 Supportive Housing for the Elderly—Application Submission Requirements**

**AGENCY:** Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of submission of proposed information collection section 202 supportive housing for the elderly—application submission requirements for FY 1995.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESS:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone number (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to the application submission requirements for the Section 202 Supportive Housing Program for the Elderly. HUD is requesting a seven-day OMB review of this information collection.

The funds for this project development and construction assistance, which are capital advances

and project rental assistance contracts, were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1995, (Pub. L. 103-327, enacted September 28, 1994).

HUD intends to make available \$510,518,387 in capital advance assistance which will produce approximately 7,409 units of supportive housing for the elderly. HUD also will make available sufficient project rental assistance funds to help cover the project's operating cost. These funds will be provided to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly.

This Section 202 application submission package describes the contents of the application package and includes the forms and other information an applicant needs to file an application. The Section 202 application consists of 11 exhibits which are evaluated by HUD to determine (1) the applicant's eligibility to participate in the program; (2) the applicant's ability (financially and administratively) to develop and operate the proposed project; (3) the need for the supportive housing in the area to be served; (4) the extent to which the applicant has site control; (5) the suitability of the site; (6) the adequacy of the provision of supportive services; (7) the adequacy of the proposed facility; and (8) that the applicant has properly certified to comply with the various governmental requirements, Executive Orders, etc.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35);

- (1) the title of the information collection proposal;
- (2) the office of the agency to collect the information;
- (3) the description of the need for the information and its proposed use;
- (4) the agency form number, if applicable;
- (5) what members of the public will be affected by the proposal;

(6) how frequently information submission will be required;

(7) an estimate of the total number of hours needed to prepare the information submission including the number of respondents, frequency of response, and hours of response;

(8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 24, 1995.

**Jeanne K. Engel,**

*General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

**Notice of Submission of Proposed Information Collection to OMB**

**Proposal:** Section 202 Supportive Housing Program for the Elderly—Application Submission Requirements, FR-3904.

**Office:** Office of Assistant Secretary for Housing—Federal Housing Commissioner.

**Description of the Need for the Information and Its Proposed Use:**

This information collection is required in connection with the application submission requirements for the Section 202 Supportive Housing Program for the Elderly. HUD intends to make available \$510,518,387 in capital advance assistance to expand the supply of supportive housing for the elderly. This information collection describes the contents of the application package which is used by HUD to determine the acceptability of the requests for capital advance assistance.

**Form Number:** HUD-92015-CA

**Respondents:** Private Nonprofit Organizations and Nonprofit Consumer Cooperatives

**Frequency of Submission:** Annually  
**Reporting Burden:**

	Number of respondents	Frequency of Response	Hours per response	Burden hours
Application package .....	600	1	41.3	22,500

**Total Estimated Burden Hours:** 22,500  
**Status:** Reinstatement with Change

**Contact:** Margaret F. Milner, HUD (202) 708-4542; Joseph F. Lackey, Jr., OMB (202) 395-7316.

Dated: May 24, 1995.

## Section 202 Application Submission Requirements OMB No. 2502-0267

### A. Supporting Statement

#### 1. Need for Information

The Section 202 program, amended by the National Affordable Housing Act (NAHA) of 1990 and the Housing and Community Development Act of 1992, provides capital advances to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. In order to ensure that only eligible private nonprofit organizations and nonprofit consumer cooperatives are selected, it is important to obtain information from prospective applicants to assist HUD in determining if they have the administrative capacity to develop such a project and whether the project design and proposed services meet the needs of the residents. These factors are critical in meeting statutory requirements and in protecting the Department's financial interest in projects funded under this program.

In keeping with the Department's commitment to streamline the Section 202 application submission package, the Department met with representatives of Section 202 nonprofit organizations, housing consultants and other program staff to discuss ideas for revamping the Section 202 application submission package to make it less burdensome to Section 202 applicants without compromising the Federal Government's financial interest in the project.

More recently, the Department held two working group sessions to identify further ways to streamline the Section 202 program and make it more consumer friendly. The working groups consisted of Sponsors of Section 202 projects and HUD staff. Additionally, the Department conducted a Section 202 consumer forum in which program beneficiaries, primarily elderly residents and potential residents, expressed their concerns about the quality of living in existing Section 202 projects and provided ideas for improving the program and projects. The supporting justification as contained herein reflects the results of the Department's meetings and telephone conversations with the private sector and HUD program staff.

The Section 202 application submission package for the fund reservation was approved by OMB under No. 2502-0267 which expired in December 1994. The Department is requesting reinstatement of OMB No. 2502-0267 to permit the Department to collect the information identified in this submission.

The Department has an on-going commitment to identify ways to simplify the process by which the Section 202 program is administered (including the application submission requirements) so that it can be more consumer friendly. Because of this commitment, the Department wanted greater participation from the private sector in revising the program. To accomplish this, additional time was needed to arrange for and conduct the various working group sessions with the private sector and other program staff, and to evaluate the recommendations resulting from these sessions. As a result of this public-private effort, the Department was unable to make the final revisions to the application submission package prior to the OMB expiration date.

Based on our previous years' experience, the Department receives far more applications than available resources can fund. In Fiscal Year (FY) 1994, the Department received 492 applications requesting some 26,364 units of housing and could only select for funding 164 applications for some 7,819 units of housing.

Because the Department has continued to reduce program requirements at the fund reservation stage and because the program provides for capital advances (in lieu of loans), the Section 202 program is expected to attract more nonprofit organizations. It is anticipated that the number of applications received will exceed those received in FY 1994. In view of the highly competitive nature of the Section 202 program, it is necessary to have the responses comply with prescribed application requirements in order to form a basis for HUD's evaluation in selecting applications.

The application submission requirements, summarized below, were developed after much consultation with the professionals in the field of providing housing for the elderly and were intended to not only reduce the paperwork burden to the nonprofit applicants but to minimize their front-end expenditures in putting together an application package. This is important because only a small percentage of the universe of applications received ultimately are funded.

#### Contents of Application Package

The contents of the Application for a Section 202 Fund Reservation have been reorganized and reduced from five parts and 22 exhibits to four parts and 11 exhibits. Included with the 11 exhibits are six prescribed forms; five are required and one is optional.

There are 15 certifications in the application package. Eleven of the certifications have been combined into a single document as a convenience to the applicant. The four components of the application submission package are:

- Part 1—Application for Section 202 Supportive Housing Capital Advance
- Part 2—Sponsor's Ability to Develop and Operate the Proposed Project
- Part 3—Need for Supportive Housing in Area to be Served, Extent to Which Sponsors has Site Control, and Suitability of Site; Adequacy of Provision of Supportive Services and of the Proposed Facility
- Part 4—General Application requirements and Certifications

All of the required application exhibits are specifically identified in Section 889.270(b) of the Section 202 regulations, as amended.

2. The Section 202 application submission requirements are necessary to assist HUD in determining an applicant's eligibility and capacity to develop housing for the elderly consistent with prescribed statutory and program criteria. A thorough evaluation of an applicant's qualifications and capabilities is critical in protecting the Federal Government's financial interest and to mitigate any possibility of fraud, waste or mismanagement or public funds.

The procedures for information collection requires the prospective applicant to submit its Section 202 application to the appropriate local HUD Office by the nationally established deadline date (usually between March and June). Local HUD Office evaluate applications based on established criteria (identified in Section 889.300 of the regulations), rate the applications and make selection recommendations to Headquarters (usually by the first week of September). Applicants are notified of selection or nonselection generally by September 30. This process occurs once a year.

The purpose and use of the four components of the application exhibits are briefly described below:

- (a) Part 1—Application for Section 202 Supportive Housing—Capital Advance

*Exhibit 1:* This exhibit requires applicants to submit Form HUD-92015-CA, Request for Section 202 Fund Reservation—Summary Information. This is a relatively new form which replaced Form HUD-92013, Application for Multifamily Housing Project, at the fund reservation stage. Form HUD-92015-CA was specifically designed to require the minimum information needed about the project for HUD

review at this stage. The form identifies the applicant and its known development team members as well as collects basic information with regard to the proposed project's characteristics. It is used by HUD staff to obtain basic information regarding the proposed project. Since this Form is only used at the fund reservation stage, in the previous clearance submission to OMB, we requested that it be assigned the same OMB number as this submission (i.e., 2502-0267). It inadvertently was assigned OMB No. 2502-0462 which relates to the Section 811 application submission package.

(b) Part 2—Sponsor's Ability To Develop and Operate the Proposed Project

*Exhibit 2:* This exhibit requests the submission of organizational documents, IRS tax exemption ruling, and a Resolution, which also includes a listing of all officers and directors, concerning Conflict of Interest to assure that no officer or director has a financial interest in the project. It is important to note that not all applicants will have to submit all of the information asked for in this exhibit. Applicants who have received a Section 202 fund reservation within the last three funding cycles are not required to submit their organizational documents and IRS tax exemption rulings. Instead, these applicants must submit only the project numbers of their latest application and any modifications to these documents, if any.

*Exhibit 3:* This exhibit requests narrative descriptions of the applicant's experience in operating rental housing projects as well as its experience with programs other than housing such as the provisions of services. This information includes the applicant's experience in serving the elderly and minorities. This information will assist HUD in determining the applicant's over-all previous experience and capacity to operate the proposed project over an extended period of time. This is consistent with the statute which requires applicants to be selected on, among things, their ability to develop and operate the proposed housing.

In addition, the statute provides for the local coordination of services by requiring, among things, that applicants have management capacity to coordinate the provision of services and seek on a continuous basis new sources of assistance for the provision of supportive services tailored to the individual needs of the residents. In order to assess the applicant's ability to carry out these statutory requirements, the applicant is required to submit a

statement evidencing its ties to the community, including minority support, in which the proposed project is to be built as well as a statement regarding its purposes and activities.

Under this part, the applicant also submits a narrative description of its contracting experience with minority and women-owned businesses pursuant to Executive Orders 11625, 12432 and 12138, as well as its efforts to involve elderly persons, including minority elderly persons, in the development of the application and its intent to involve such persons in the development of the project.

Included in this exhibit is a certified Resolution from the applicant's Board acknowledging its responsibilities of sponsorship and long-term support of the project, along with its willingness to fund the minimum capital investment, estimated start-up expenses, and the cost of any amenities or features that cannot be covered by the capital advance.

It is important to note that many applicants will experience some relief of paperwork burden in preparing this exhibit because applicants that have participated in prior funding competitions will be able to utilize information and exhibits from previously prepared applications. Some examples include information regarding previous experience in the provision of housing and services, supportive services plan, community ties, and experiences serving minorities.

(c) Part 3—Need for Supportive Housing in Area to be Served, Extent to Which Sponsor has Site Control, and Suitability of Site; Adequacy of Provision of Supportive Services and of the Proposed Facility

*Exhibit 4:* This exhibit requests information pertaining to the categories of elderly persons to be served, proposed site (including environmental condition of the site), proposed design of the facility, provision of supportive services, and demand for the proposed housing. Also, the applicant must include a map showing the racial composition and location of facilities and services of the area where the project is to be located and Form HUD-92013E, Supplemental Application Processing Form—Housing for the Elderly (OMB No. 2502-0232).

Information relative to the site and proposed residents is necessary to assure that the proposed site is acceptable from an environmental and locational standpoint for the intended use and the applicant has control of the site as well as can obtain proper zoning. In addition, the information is needed to

determine the market needs and demand for supportive housing for the elderly in the area to be served by the proposed project.

Form HUD-92013E is used by the applicant to identify supportive services, if any, to be provided to proposed residents of the housing. In granting the previous approval to collect information under 2502-0267, OMB conditioned the approval on the correction of two forms, one, of which, was Form HUD-92013E. OMB specified that the Department must accurately reflect the burden in the disclosure statement. The disclosure statement for this form is contained on the top of the second page and it reflects 8 burden hours. The reporting of 8 burden hours is correct for this form and this submission package has been revised to reflect 8 burden hours for this form.

In addition to describing the proposed services, the applicant provides information about (1) any public or private sources of assistance expected to fund the proposed services; (2) the manner in which the services will be provided; (3) the building design and how the design will facilitate the delivery of services and accommodate the changing needs of the residents; and (4) how and if the proposed project will promote energy efficiency, including any innovative construction or rehabilitation methods.

This information is evaluated to determine the adequacy of the provision of such services and how such services will be funded; how the services and building design will meet the identified needs of the residents as well as accommodate the aging in place of the residents over the years. This is important because the NAHA requires HUD to ensure that supportive services are provided which are tailored to the needs of the type of elderly persons (including the frail elderly) occupying the housing. HUD funds (Project Rental Assistance Contract funds) may be used to cover a small portion (15 percent) of the cost for such services. The balance of the service cost must be provided from other sources.

Information with respect to the promotion of an energy efficient building design will be used to assist HUD in determining compliance with the energy efficiency standards in accordance with Section 109 of NAHA. The information required under this Exhibit is in accordance with the NAHA.

(d) Part 4—General Application Requirements and Certifications

*Exhibit 5:* To assist HUD in determining if the applicant is over-

committed, the applicant submits for HUD's review a list of all Section 202 and Section 811 applications submitted for the current fiscal year funding round, and a list of projects previously funded which have not finally closed. This is information that an applicant that participated in a prior year can easily update, if necessary, and resubmit for the current year.

*Exhibit 6:* Form HUD-2880, Applicant/Recipient Disclosure/Update Report (OMB No. 2525-0101), is required by Section 102 of the HUD Reform Act of 1989. The applicant uses this form to disclose any other government assistance that may be provided in connection with the proposed project as well as to report its Social Security Numbers or Employee Identification Numbers. This information assists HUD to ensure that the applicant does not receive more assistance than is necessary to develop and operate the proposed project.

*Exhibit 7:* This exhibit is a certification, to be completed by the Section 202 applicant, that the application was submitted to the State for its review or that the State was contacted and it was determined that a State review was not required. This certification is required by OMB in accordance with Executive Order 12372.

*Exhibit 8:* This is a Guide Form, titled Project Data on Occupancy, Displacement and Real Property Acquisition (Form HUD-40087), and its use is *optional*. An applicant, at its option, may use to report information relative to the acquisition of property and the relocation or displacement of occupants in cases where the applicant proposes to acquire property which is occupied. This information is consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

In granting the previous approval to collect information under 2502-0267, OMB conditioned the approval on the correction of two forms, one, of which, was Form HUD-40087. OMB specified that the Department must accurately reflect the burden in the disclosure statement. This form is exempt from the burden disclosure requirements because it is only a "guide" form to be used at the option of the applicant. It is only included in the application package as a convenience to the applicant. The applicant is not required to submit this form. The information regarding any relocation activities may be submitted in narrative form.

*Exhibit 9:* Information requested on Form SF-424, Application for Federal Assistance (OMB No. 0348-0043), serves a dual purpose. Pursuant to

Executive Order 12372, the applicant submits this form to the State which is used by the State to initiate the intergovernmental review process. The applicant also uses the form to certify that it is not delinquent on any Federal debt which is an OMB requirement.

*Exhibit 10:* The applicant provides the Form SF-LLL, Disclosure of Lobbying Activities (OMB No. 0348-0046), to indicate if other than federally appropriated funds have been or will be used to lobby the Executive or Legislative branches of the Federal Government pursuant to Title 31 U.S.C., Section 1352.

*Exhibit 11:* This exhibit represents the consolidation of the following ten certifications into a single document, thereby requiring one signature for all. These certifications are required by governmental actions, Executive Orders, etc. and are used to review the applicant's intent to comply with the (1) Civil Rights, Fair Housing and Equal Opportunity laws; (2) Drug-Free Workplace Act; (3) HUD's design and cost standards including the Uniform Federal Accessibility Standards and Section 504 of the Rehabilitation Act of 1973; (4) acquisition relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; (5) requirement to form an Owner after issuance of the capital advance; (6) Davis-Bacon Act Provisions; (7) requirement that the project be consistent with the Consolidated Plan for the appropriate jurisdiction; (8) Flood Disaster Protection Act of 1973; (9) National Environmental Policy Act; (10) Anti-Lobbying Prohibition; and (11) requirement regarding the truth and accuracy of the information contained in the application.

Included in this exhibit also is a guide format for use by the public official responsible for developing the Consolidated Plan to indicate whether or not the proposed activities are consistent with the Consolidated Plan or the previous year's Comprehensive Housing Affordability Strategy (CHAS) if the Consolidated Plan has not yet started.

In the absence of collecting the above information, the Department would not be able to assess the worthiness of the applications, determine whether the facilities and services meet statutory and regulatory requirements, or make sound judgements regarding the potential risk to the Government.

3. Each fiscal year (near the beginning of the funding cycle), HUD issues a Notice pertaining to application submission requirements. During this

process, the Department reevaluates the application submission requirements to identify ways to reduce the burden to the applicants. Because the Section 202 program had changed drastically when it was converted to a capital advance program, the Department made major revisions to the application package at that time. More recently, in response to feedback from the professionals in the field of developing Section 202 housing, the Department made further major changes to streamline the program. This has resulted in less paperwork for the applicants. Therefore, in revising the application package, consideration was given to modifying it to require the minimum of information needed by HUD to conduct the program in accordance with the NAHA, statutory and regulatory requirements and, at the same time, to establish a selection system which is equitable to all participants. The information described under Item 2 above represents the minimum information acceptable to HUD. Further, as mentioned in Item No. 2 above, many applicants will experience a tremendous relief from paperwork burden because they will not have to spend time preparing "new" information to complete an Exhibit. In some cases, those applicants that have participated in this program in the past will be able to utilize previously submitted information.

4. No duplication exists, as there are no other forms or exhibits used for the purposes specified under Item 2 herein. Individual applications are evaluated and rated by HUD on the merits of the responses submitted with the application. Each application is unique. The information contained in each application relates to a particular Sponsor proposing a specific project, design, site, etc., and, as such, the information collected from applicants will be significantly different per application.

Also, the Department implemented a new requirement which relieves a previously funded applicant of the burden of submitting certain documents (e.g., the organization's Articles of Incorporation, By-Laws and IRS tax exemption ruling). Further, since FY 1991 when the program was converted to a capital advance program, HUD has been reviewing and modifying the application submission requirements to assure that only necessary information is being requested of applicants. HUD has taken into consideration suggestions made by the private sector in modifying the application submission requirements.

5. Due to the highly competitive nature of the Section 202 program, the

application submission requirements were developed in a way to minimize the front-end cost to the nonprofit applicant and only require the minimum amount of information needed in HUD's evaluation. This is important due to the fact that only a small percentage of the universe of applications received ultimately get selected. For example, although applicants may still obtain the services of a housing consultant, information on the consultant is no longer required to be submitted at this stage. HUD review and approval of the consultant will be done at a later stage and only for those projects which are ultimately selected for funding.

Also, eliminated at the fund reservation stage is the submission of Form HUD-92530, regarding the applicant's previous participation in HUD programs and Form HUD-92013 Supplement, Supplement to Application for Multifamily Housing Project. The submission and review of these forms have been deferred to a subsequent processing stage. Sponsors no longer have to submit sketches of the site plans which included typical unit and floor plans, making it unnecessary for an applicant to have to obtain input from an architect at this stage. Other major documents recently eliminated at this stage are the applicants' financial statements and a narrative description of the applicant's financial history. The elimination of these documents will result in a tremendous relief of paperwork burden to small and minority applicants.

The Department has consolidated several of the certification forms into a single document for the applicant's convenience.

Also, the Department has prepared sample Application Packages which include all the required forms and materials necessary to put together an Application Package. The sample Application Packages will be made available to all applicants well in advance of the deadline date for submission of applications.

Local HUD Offices are required to conduct workshops to provide needed guidance to applicants in preparing the application packages. In an effort to assist the small sponsoring organizations as well as first-time applicants, HUD staff also conducts pre-workshops especially designed for them.

In addition to the above, HUD recognizes that some applicants, who are sincerely interested in providing housing, may lack the staff and other resources to develop such a project. Therefore, in recognition of the need for

these applicants to use the services of professional housing consultants, HUD permits a reasonable fee for consultant's services to be included in the Section 202 capital advance. The consultant may assist the applicant in preparing the Application Package to request a Section 202 Capital Advance and throughout the final development of the project should the applicant be selected for funding.

6. Currently, the information collection activities occur annually to coincide with the receipt of annual fiscal year appropriations for the program. Each year, Congress appropriates funds with which to select new applications. HUD, in turn, invites applications and makes selections based on the funds available for the year. These funds are normally exhausted at the end of each fiscal year. The Section 202 regulations require HUD to publish a Notice of Fund Availability (NOFA) in the **Federal Register** when such funds are made available by Congress. The regulations also require HUD to specify a deadline date for receipt of applications. In order for HUD to accept an application, the application must have been submitted in response to a specific NOFA and Invitation requesting such an application and by the closing date stated in the Invitation. As the funding cycle for the program occurs annually, including the Invitations for Applications, it is not possible to require the submission of this information less frequently.

7. Part 5 CFR 1320.6 lists 10 items that OMB will not approve for information collection, unless it can be demonstrated that the collection of information is necessary to satisfy statutory requirements or other substantial need.

This request for information is consistent with the guidelines under 5 CFR 1320.6 with the exception of one item. Subparagraph (c) of the above CFR indicates OMB's disapproval of requiring respondents to submit more than an original and two copies of any document. HUD requires applicants to submit an original and four copies of the Section 202 Application. The changes to the application submission requirement resulted in a better organized Application Package. As the program is administered on an annual basis, processing of the application must be accomplished in an expeditious manner in order that decisions regarding selections of applications and reservations of funds can be made prior to the end of the fiscal year (September 30).

During the course of processing the applications, eight HUD technical

disciplines are involved in the review process: staff from Valuation, Architectural and Engineering, Housing Management, Fair Housing and Equal Opportunity, Economic and Market Analysis, Community Planning and Development, the Multifamily Housing Representative and the Office Counsel. These HUD staff members are required to comment on the approvability of each application received.

Because of the (1) various HUD staff involved in the review process, (2) tremendous volume of applications received each fiscal year, and (3) the commitment to obligate funds by the fiscal year-end, HUD requires concurrent reviews of the applications by the aforementioned HUD staff to assure prompt processing with minimum interruption. For example, additional information or clarification is often needed from applicants to permit HUD to make a fair and complete review. The requirement for simultaneous reviews promotes a more efficient, time-saving method to provide applicants a single notification regarding all deficiencies noted as a result of a full review from each HUD technical discipline.

HUD needs more than an original and two copies of the application in order to carry out the above procedures for concurrent reviews.

8. This OMB request is the result of on-going telephone conversations, meetings and workshops HUD staff recently held with Section 202 nonprofit Sponsors, housing consultants, elderly residents and potential residents, and other interested HUD program staff. The Department consulted with various housing professionals representing the types of Sponsors that generally participate in the Section 202 program; i.e., minority organizations, small organizations and nonminority organizations. Following is a list of some of the housing professionals (Housing Consultants and Section 202 Sponsors) that HUD consulted with by telephone, meetings and/or workshop sessions:

Judy Ponds, Housing Services, 1234 4th Street SW., Washington, DC 20024, (202) 488-1639

Sam Simmons, National Center on Black Aged, 1424 K Street NW., Suite 500, Washington, DC 20005, (202) 637-8400

Nick Smyrnis, AHEPA Management Corp., 7202 N. Shadeland Ave., Indianapolis, IN, (317) 845-3410

Jane Graf, Mercy Charities Housing, 1028A Howard Street, San Francisco, CA 94103, (415) 487-6825

Mark Olshan, B'nai B'rith, 1640 Rhode Island Avenue, NW., Washington, DC 20036, (202) 857-6580

Alan Patricio, P.O. Box 53274, Atlanta, GA 30355, (404) 237-9877

Joe Howell, 815 15th Street NW., Washington, DC 20005, (202) 393-3044

Randy Speaker, Bank IV Towers, 534 Kansas Avenue, Suite 910, Topeka, KS 66603, (913) 232-8338

Harrison Joseph, Nat'l Baptist Convention, 338 Washington Street, Newark, OH 43005, (614) 258-7998

Tom Slemmer, Nat'l Church Residences, 2335 N. Bank Drive, (614) 451-2151

Don Redfoot, American Assn. for Retired Persons, 601 E Street NW., Washington, DC 20049, (202) 434-2277

Jose Fabregas, CODEC, Inc., 300 SW 12th Street, Suite A, Miami FL 33130, (305) 642-1361.

Additionally, inasmuch as this OMB request is submitted in accordance with 24 CFR 889.270, as amended, the promulgation procedure for regulations allows sufficient participation by outside agency contacts to review and comment on the application materials.

9. HUD does not assure confidentiality.

10. The application submission requirements do not contain any sensitive questions.

11. Provide estimates of annualized cost to the Federal Government and to the respondents.

(a) Estimate of Cost to Federal Government: Inasmuch as the majority of the work involved in reviewing the

applications is performed at the local HUD Office level, the significant costs attributable to the promulgation of the application requirements will be the cost involved in reviewing the information submitted by applicants. Outstanding program procedures require the following reviews performed by the various Field Office staff. The cost to the Federal Government is based on an average salary at the GS-12 level, except for the Office Counsel and the Clerical Assistant which is at the GS-14 and GS-7 levels, respectively. Also, included is the cost associated with the preparation and printing of the HUD Application Package for use by the applicants in putting together their individual Application Packages.

Reviews

HUD staff	Total time per application (hours)	Hourly rate	Total
Multifamily housing representative .....	3	\$22	\$66
Architectural .....	1	22	22
Valuation .....	3	22	66
Economic and market analysis .....	1	22	22
Fair housing and equal opportunity .....	1	22	22
Housing management .....	1	22	22
Community planning and development .....	1	22	22
Field office counsel .....	3	31	93
Clerical assistant .....	0.5	13	6.5
Total staff time—per application .....	14.5	.....	\$341.5
Total annual number of responses .....	.....	.....	*x600
Total annual staff time cost to government .....	.....	.....	204,900
Other cost for all applications:			
Printing/reproducing HUD application package (600 copies) .....	.....	.....	700
Postage (600 copies x \$3.00) .....	.....	.....	1,800
Multifamily Clearinghouse (Mailing Services) .....	.....	.....	** 5,000
Total other cost .....	.....	.....	7,500
Total estimated annual cost to government .....	.....	.....	212,400

\* See Item 12 below for an explanation.

\*\* The Department now utilizes the services of a Multifamily Clearinghouse to maintain a national mailing list for Section 2020 Applications and to mail out the applications. Most applicants will receive their packages through the mail. However, some applicants will be handed copies of the Application Packages at the HUD-held workshops.

(b) Estimate of cost to Respondents: In estimating the cost to the applicants, it should be noted that in order to comply with the revised program requirements, the applicant may retain an attorney. In addition, as many nonprofit organizations do not have in-house expertise or a staff to develop an application, a housing consultant is usually hired by the applicant. The applicant is a nonprofit organization and as such provides its services at no cost. In view of this, the following illustrates the estimated cost to the public:

Housing consultant (\$40 per hour) .....	\$1,092
Applicant (sponsor) .....	(**)

Attorney .....	1,000
Total cost per respondent .....	2,092
Total annual number of responses .....	*x600
Total estimated annual cost for all applicants	1,255,200

\* See Item 12 below for an explanation.  
\*\* Probono.

This reflects no change in the cost to the applicant from the previous OMB submission. Beginning this year, the Department is requiring the applicant to include as part of Exhibit 4 information about the environmental condition of the proposed site. An adjustment was made to take into consideration the

additional time and cost that will be incurred by the applicant to inspect the proposed site for this purpose. Also, an adjustment was made to the burden hour time associated with Form HUD-92013E, Supplemental Application Processing Form—Housing for the Elderly, to comply with OMB's conditions for approval. However, these adjustments (increases) are offset by the reduction of burden hour time associated with the elimination of the financial documents.

It should be noted that many professionals work on a retainer basis and if the application does not obtain HUD approval, they do not collect a fee. The figures presented above are based on our own experience, as well as

consultation with housing professionals in the field.

12. Although for Fiscal Year 1994 HUD received approximately 500 Section 202 applications, it is anticipated that because the Department has further simplified the application submission requirements coupled with the fact that the program provides capital advances in lieu of loans, the number of applicants will increase beyond the Fiscal Year 1994 level. It is anticipated that the level of activity will average 600 applications annually over the next three years. Although the program funding cycle is on an annual basis, each prospective applicant could submit more than one application. However, our estimate of time involved in based on one application per applicant.

To assist the applicant in putting together an Application for a Fund Reservation, the Department developed an Application Package consisting of the information, forms and materials needed by the applicant to assemble an application. The HUD Application Package, which will be made available to all applicants, is expected to aid in reducing the applicant's and housing consultant's time and effort in putting together an application.

Given the above and using the categories presented in the illustration in Item 11(b) above, the estimated amount of hours involved in developing a complete application submission is as follows:

	Hours
Housing consultant .....	27.3
Attorney .....	2.0
Applicant (sponsor) .....	12.0
Total .....	41.3

These figures are based on HUD's experience, as well as consultation with housing professionals in the field.

This reflects a slight decrease (1 hour) from the previous OMB submission (from 42.3 to 41.3 hours). This represents the net result of adjusting the burden time associated with Form HUD-92013E, the exhibit regarding project information to include an environmental review of the site by the applicant and the elimination of the applicant's financial documents.

A Tabulation of Annual Reporting Burden is shown in Table 1. It should be noted that Exhibits 4, 6, 9 and 10 already have OMB clearances as shown in the Table. These information collections are common to many of our programs and our request for clearance was calculated to include the burden associated for all program uses. The burden shown in Table 1 for Exhibits 4, 6, 9 and 10, therefore, reflects our estimate applicable to the Section 202 program. No adjustment to the previously cleared Exhibits 4, 6, 9 and 10 is required.

13. The primary reduction of 6,377 in the total burden hours (from 28,877 to 22,500) is due to a change in

information requested in the application, specifically, the elimination of the financial documents, and a decrease in the number of applicants (from 788 to 600) expected to submit applications this fiscal year. A minor adjustment to the applicant's burden time (associated with Exhibit 4) was made to include the additional time an applicant will need to perform an environmental inspection of the proposed site. In the past, most applicants would generally inspect the site to determine its acceptability for developing a project for the elderly, which included inspecting it for potential environmental problems. However, because the Department is specifically requiring that an environmental inspection be performed, we have adjusted the applicant's burden time to include this function. An adjustment also was made to Form HUD-92013E to provide for the 8 hour burden time as reported in the disclosure statement on the form. However, in view of the elimination of the financial documents and the decrease in applicant participation, the net result is a reduction in total burden hours.

15. Not applicable.

*B. Collections of Information Employing Statistical Methods.*

Not applicable.

BILLING CODE 4210-27-M

TABLE 1 - TABULATION OF ANNUAL REPORTING BURDEN

DESCRIPTION OF INFORMATION COLLECTION (APPLICATION SUBMISSION REQUIREMENTS) (2502-0267)	SECTION OF CFR AFFECTED	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES PER RESPONDENT	TOTAL ANNUAL RESPONSES	HOURS PER RESPONSE	TOTAL HOURS
PART 1: Exhibit 1, Form HUD-92015-CA (OMB 2502-0267)*	889.270(b)(1)	600	1	600	.5	300
PART 2: Exhibit 2, Evidence of Sponsor's Nonprofit Status	889.270(b)(2)	600	1	600	2.0	1200
" Exhibit 3, Description of Purpose, Community Ties and Experience	889.270(b)(9)(10) (11)(12)(13)	600	1	600	8.0	4800
PART 3: Exhibit 4, Project Information Form HUD-92013E (OMB 2502-0232)	889.270(b)(16)(17) (18)(19)(20)	600	1	600	21.5	12900
PART 4: Exhibit 5, Statement on Other 202 or 811 Applications Submitted and Funded Projects	889.270(b)(14)	600	1	600	2.0	1200
" Exhibit 6, Form HUD-2880, Applicant Disclosure Report (OMB 2525-0101)	889.270(b)(15)	600	1	600	2.5	1500
" Exhibit 7, Certification on EO 12372	889.270(b)(4)	600	1	600	0.4	240
" Exhibit 8, Guide Form to Report Data on Project Displacement and Real Property Acquisition (Form HUD-40087)	889.270(b)(7)	30**	1	30	4.0	120

DESCRIPTION OF INFORMATION COLLECTION (APPLICATION SUBMISSION REQUIREMENTS) (2502-0267)	SECTION OF CFR AFFECTED	NUMBER OF RESPONDENTS	NUMBER OF RESPONSES PER RESPONDENT	TOTAL ANNUAL RESPONSES	HOURS PER RESPONSE	TOTAL HOURS
PART 4: Exhibit 9, Form SF-424, Application for Federal Assistance (OMB 0348-0043)						
		EXEMPT PER 5 CFR PART 1320				
" Exhibit 10, Form SF-LLL, Disclosure of Lobbying Activities (OMB 0348-0046)						
		EXEMPT PER 5 CFR PART 1320				
" Exhibit 11, Certifications (Includes Consolidated Plan Certification From Local Public Official)	889.270(b) (8)	600	1	600	0.4	240
<b>TOTALS</b>		600	1	600	41.3	22,500

\* Form HUD-92015-CA was assigned OMB No. 2502-0462 in error; however, it should have been assigned OMB No. 2502-0267 which is the OMB number for this clearance package. Refer to the narrative justification for an explanation.

\*\* Based on experience, no more than 5 percent of the proposals will involve relocation.

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**PART I - APPLICATION FOR SECTION 202 SUPPORTIVE HOUSING - CAPITAL ADVANCE** **PAGE**

EXHIBIT 1: Form HUD-92015-CA, Application for Section 202 Supportive Housing Capital Advance \_\_\_\_\_

**PART II - SPONSOR'S ABILITY TO DEVELOP AND OPERATE THE PROPOSED PROJECT**

EXHIBIT 2: Legal Status of each Nonprofit or Consumer Cooperative Sponsor:

- a. Articles of Incorporation (or other organizational documents) \_\_\_\_\_
- b. By-laws \_\_\_\_\_
- c. IRS Tax Exemption Ruling \_\_\_\_\_
- d. Conflict of interest Resolution \_\_\_\_\_

[NOTE: SPONSORS WHO HAVE RECEIVED A SECTION 202 FUND RESERVATION WITHIN THE LAST THREE FUNDING CYCLES ARE NOT REQUIRED TO SUBMIT THE DOCUMENTS DESCRIBED IN (a), (b), and (c), ABOVE. INSTEAD, SPONSORS MUST SUBMIT THE PROJECT NUMBER OF THE LATEST APPLICATION AND THE HUD OFFICE TO WHICH IT WAS SUBMITTED. IF THERE HAVE BEEN ANY MODIFICATIONS OR ADDITIONS TO THE SUBJECT DOCUMENTS, INDICATE SUCH, AND SUBMIT THE NEW MATERIAL.]

**EXHIBIT 3: Sponsor's purpose, community ties and experience:**

- (a) A description of Sponsor's purposes and activities, ties to the community and minority support and how long it has been in existence (include any additional related information); \_\_\_\_\_
- (b) A description of Sponsor's housing and/or supportive services experience. The description should include any rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor, the Sponsor's past or current involvement in any programs other than housing that demonstrates the Sponsor's management capabilities and experience and the Sponsor's experience in serving the elderly and/or families and minorities; \_\_\_\_\_
- (c) A description of Sponsor's experience in contracting with minority and women-owned businesses including a summary of the total amount awarded in each of the two categories for the preceding three years and the percentage that amount represents of all contracts awarded by the Sponsor in the relevant time period; \_\_\_\_\_
- (d) A certified Board Resolution \_\_\_\_\_

- (e) Description, if applicable, of the Sponsor's efforts to involve elderly persons, including minority elderly persons, in the development of the application as well as its intent to involve elderly persons in the development of the project. (Bonus)
- 

**PART III - NEED FOR SUPPORTIVE HOUSING IN THE AREA TO BE SERVED, EXTENT TO WHICH THE SPONSOR HAS SITE CONTROL, AND SUITABILITY OF SITE; ADEQUACY OF PROVISION OF SUPPORTIVE SERVICES AND OF THE PROPOSED FACILITY**

**EXHIBIT 4: Project information**

- (a) Evidence of need for supportive housing
- 
- (b) Description of the project which includes:
- (1) Narrative description of the building design including a description of any special design features and community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10-20 years.
- 
- (2) Describe if and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction
-

**(c) Evidence of site control and permissive zoning:**

- (1) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site** \_\_\_\_\_
- (2) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations** \_\_\_\_\_
- (3) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that impacts on the suitability of the site for the elderly** \_\_\_\_\_
- (4) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated** \_\_\_\_\_
- (5) A Transaction Screen Process and a Phase I Environmental Site Assessment** \_\_\_\_\_

**(d) Provision of supportive services and proposed facility:**

- (1) A detailed description of the supportive services proposed to be provided to the anticipated occupancy** \_\_\_\_\_

- (2) Form HUD 92013E, Supplemental Application Processing Form - Housing for the Elderly. Identify all supportive services, if any, to be provided to the persons occupying such housing \_\_\_\_\_
- (3) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services \_\_\_\_\_
- (4) The manner in which such services will be provided to such persons (*i.e.*, on or off-site), including, whether a service coordinator will facilitate the adequate provision of such services, and how the services will meet the identified needs of the residents \_\_\_\_\_

**PART IV - GENERAL APPLICATION REQUIREMENTS/CERTIFICATIONS**

**EXHIBIT 5:** A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other HUD Office in response to this NOFA or the NOFA for Supportive Housing for Persons with Disabilities. Also, a list of prior year projects which have not been finally closed \_\_\_\_\_

**EXHIBIT 6:** HUD-2880, Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers \_\_\_\_\_

**EXHIBIT 7:** E.O. 12372 \_\_\_\_\_

**EXHIBIT 8: Form HUD-40087, Project Data on  
Occupancy Displacement and Real  
Property Acquisition:**

- (a) identify all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application \_\_\_\_\_
- (b) indicate the estimated cost of relocation payments and other services \_\_\_\_\_
- (c) identify the staff organization that will carry out the relocation activities. \_\_\_\_\_

**EXHIBIT 9: Standard Form 424** \_\_\_\_\_

**EXHIBIT 10: Standard Form LLL, Disclosure of  
Lobbying Activities** \_\_\_\_\_

**EXHIBIT 11: Sponsor Certifications** \_\_\_\_\_

Supportive Housing for the Elderly
Section 202
Application for Capital Advance
Summary Information

U.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

EXHIBIT 1

OMB Approval No. 2502-0267(exp.12/31/94)

Public Reporting Burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

HUD Use Only | 202 Project Number: | PRAC Number:

1. Sponsor's Name(s), Address(es) & Telephone Number (s): | 2. Minority Sponsor Designation: A minority sponsor is one in which at least 51 percent of the board members are minority.

3a. Address of Site: | 3b. Will project be located within the boundaries of a Federally designated Empowerment Zone, Urban Supplemental Empowerment Zone, Enterprise Community or Urban Enhanced Enterprise Community?

4. Congressional District: | 5. Type of Area: Metropolitan / Non-metropolitan | 6. Capital Advance Amount Requested: \$ | 7. Project Rental Assistance Contract Amount Requested: \$

8. Total No. of Units: | 8a. Number & Type of Resident Units Proposed: Efficiency, One bedroom | 8b. Resident Manager's Unit: Efficiency, One bedroom, Two bedroom

9. Number of Buildings: | 10. Type of Project: New Construction, Rehabilitation, Acquisition (RTC) | 11. Type of Building(s): Row/Townhouse, Semi-detached, Walkup, Detached, Elevator

12. Number of Stories: | 13. Number of Parking Spaces: | 14. Check utilities and services not included in the rent and to be paid directly by the tenant: Electric, Water, Heat, Gas

15. Off-Site Facilities: Water, Sewer, Paving, Gas, Electric | 16. Community Facilities to be included in Project:

17. Unusual Site Features: None, Cuts, Fill, Erosion, Other | 18. Mark one box: Consultant, Agent, Authorized Representative | Name, Address & Telephone Number:

19. Sponsor's Attorney: (name, address & telephone number)

By: (Signature of Sponsor's Authorized Representative) | Type In Name: | Type In Title:

X

**Supplemental Application  
and Processing Form  
Housing For The Elderly/Disabled**

**U.S. Department of Housing  
and Urban Development**  
Office of Housing  
Federal Housing Commissioner

EXHIBIT 4(d)(2)

See Instructions on pages 2 & 3

OMB Approval No. 2502-0232 (exp. 11/30/95)

Project Name _____				<input type="checkbox"/> Congregate <input type="checkbox"/> Mixed <input type="checkbox"/> Non-Congregate		Project Number _____	
<b>A. Non-Rent Congregate Living Space</b>				<b>E. Health Service</b>		<b>Annual Expense</b>	
1. Congregate Kitchen and Dining				1. Nursing Payroll		Sponsor      HUD	
2. Lobbies				Number of Nurses _____			
3. Community Room				x salary \$ _____		\$ _____ \$ _____	
4. Hobby Shop				2. Equipment Expense:			
5. Infirmary or Health Facility				a. Repl. Res: 10% x			
6. Other				Equipment Cost \$ _____		\$ _____ \$ _____	
7. Other				b. Int. on Inv.: _____%			
8. Total Square Feet _____				Int. Rate x Cost \$ _____		\$ _____ \$ _____	
<b>B. Project Composition</b>				c. Maintenance and Repairs		\$ _____ \$ _____	
1. Number of Bedrooms	2. Total No. of Units	3. No. of Units With Kitchens	4. No. of Units with Kitchenettes	3. Medical Supplies		\$ _____ \$ _____	
0-Bedroom Units				4. Utilities		\$ _____ \$ _____	
1-Bedroom Units				5. Laundry Service		\$ _____ \$ _____	
2-Bedroom Units				6. Other (Specify)		\$ _____ \$ _____	
<b>C. Food Service</b>				7. Total Health Service		\$ _____ \$ _____	
1. Payroll				8a. No. of Beds In Infirmary _____			
Number of cooks _____				8b. No. of Persons Serviced _____			
x salary \$ _____				9. Proposed Charge per Mo. per			
\$ _____ \$ _____				Patient _____ per Person _____		\$ _____ \$ _____	
Number of waitresses _____				<b>F. Furniture In Units</b>		<b>Annual Expense</b>	
x salary \$ _____				1. Furniture Exp. when Leased		Sponsor      HUD	
\$ _____ \$ _____				2. Furniture Exp. if Not Leased:			
Number of helpers _____				a. Repl. Res: 10% x Furniture			
x salary \$ _____				Cost \$ _____		\$ _____ \$ _____	
\$ _____ \$ _____				b. Int. on Inv.: _____% Int.			
2. Food Cost				Rate x Cost \$ _____		\$ _____ \$ _____	
\$ _____ \$ _____				3. Total Furniture Expense		\$ _____ \$ _____	
3. Supplies				4. Number of Units Furnished _____		\$ _____ \$ _____	
\$ _____ \$ _____				5. Proposed charge per unit per month		\$ _____ \$ _____	
4. Dining Room Furniture Exp.				to cover furniture rent			
a. Repl. Res: 10% x				<b>G. Other Non-Shelter Services</b>		<b>Annual Expense</b>	
Equip. Cost \$ _____				1. Program & Activities Payroll		Sponsor      HUD	
\$ _____ \$ _____				2. Other (Specify)		\$ _____ \$ _____	
b. Int. on Inv.: _____%				3. Other (Specify)		\$ _____ \$ _____	
Int. Rate x Cost \$ _____				4. Chg. per Person (Unit) for Item 1		\$ _____ \$ _____	
\$ _____ \$ _____				4. Chg. per Person (Unit) for Item 2		\$ _____ \$ _____	
c. Maintenance and Repairs				6. Chg. per Person (Unit) for Item 3		\$ _____ \$ _____	
\$ _____ \$ _____				<b>Official Use Only</b>			
\$ _____ \$ _____							
5. Other (Specify)							
\$ _____ \$ _____							
6. Other (Specify)							
\$ _____ \$ _____							
7. Total Food Service Expense							
\$ _____ \$ _____							
8. Average No. of Persons Serviced _____							
9. Proposed Charge per Person per Month							
\$ _____ \$ _____							
10. No. of Meals per Person per Day _____							
<b>D. Maid Service</b>				<b>Annual Expense</b>			
1. Payroll				Sponsor      HUD			
Number of maids _____							
x salary \$ _____				\$ _____ \$ _____			
\$ _____ \$ _____							
2. Supplies				\$ _____ \$ _____			
\$ _____ \$ _____							
3. Other (Specify)				\$ _____ \$ _____			
\$ _____ \$ _____							
4. Other (Specify)				\$ _____ \$ _____			
\$ _____ \$ _____							
5. Total Maid Service				\$ _____ \$ _____			
\$ _____ \$ _____							
6. Average Number of Units Using Service				\$ _____ \$ _____			
\$ _____ \$ _____							
7. Proposed Charge per Unit per Month				\$ _____ \$ _____			
\$ _____ \$ _____							
<b>H. Remarks &amp; Signatures</b>							
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)							
The above estimates in "Sponsor" column for Sections C through G represent estimates of income and expense in non-shelter budgets.							
Signed _____				Date _____		<input type="checkbox"/> Sponsor, <input type="checkbox"/> Mortgagor, <input type="checkbox"/> Borrower, <input type="checkbox"/> Owner	
Valuation Processor _____				Date _____		Reviewer _____	
						Date _____	

**Public reporting burden** for this collection of information is estimated to average 8.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0232), Washington, D.C. 20503. Do not send this completed form to either of the above addressees.

## Instructions

### General

Form HUD-92013E must accompany form HUD-92013, Application-Project Mortgage Insurance, for each project intended to provide housing for the elderly or the disabled.

Preparation of the forms HUD-92013 and HUD-92013E must separate the budget for shelter (and utilities included in the rent) from other budgets concerned with supplying services other than shelter, such as food service, main service, program and recreation service, rented furniture, and any other non-shelter services which may be planned. The non-shelter budgets concerned with supplying food, furniture, maid service, and other personal services are shown on the form HUD-92013E.

All non-shelter services and amenities offered with a charge to the tenant and as a condition of occupancy must be identified on this form. Special circumstances regarding items to be included in an amenity package such as additional charges for additional persons that cannot be readily shown on this form must be explained on an addendum sheet to the form HUD-92013E.

Form HUD-92013E must accompany all requests for feasibility analysis, conditional and firm commitments.

### Definitions

An elderly person is defined as one who is age 62 or over. A disabled person is one whose impairment (a) is expected to be of continued and indefinite duration; (b) substantially impedes his ability to live independently; and (c) is such that his ability to live independently could be improved by more suitable housing. (See appropriate program regulations for more detailed definitions.)

Congregate Housing is designed for persons, normally well and ambulatory, who prefer residential accommodations but need some assistance in day-to-day living. While not a nursing or medical facility, it offers services that protect residents and provide for their needs.

Congregate housing projects have a central dining room generally serving three meals a day, with emergency room service available. There are common areas for lounges, recreation, special activities; limited housekeeping and laundry services may be provided. Some projects have an infirmary with personnel qualified to control and administer medications.

### Instructions

Projects having congregated dining facilities with only kitchenettes in the living units, are checked in the box marked "Congregate." Projects having no congregated dining facilities, but having full sized kitchens in the living units are checked in the box marked "Non-Congregate." Projects having congregated dining facilities and having some living units with complete sized kitchens, are checked in the box marked, "Mixed."

### Section A. Non-Rent Congregate Living Space Areas

Enter the net area, in square feet, for various kinds of non-rent congregated living space shown, such as, congregated kitchen and dining, lobbies, community rooms, hobby shop, infirmaries, or other non-rented common buildings area. When plans are available, these net areas should be calculated from the plans. Congregated dining facilities should be large enough to serve the probable total number of diners within a single meal period, but not necessarily at a single sitting. The number of diners shall be estimated to include all of the occupants of the units having kitchenettes only, plus a reasonable portion of the occupants of units with full kitchens.

### Section B. Project Composition

For each number of bedrooms enter in Column 2 the total number of units. In Column 3, enter the number of units with complete kitchens. In Column 4, enter the number of units with kitchenettes only.

### Non-Shelter Income and Expense Budgets.

Sections C through G contain budgets of income and expense for furnishing various non-shelter services. The sponsor enters his estimates of items of income and expense for each budget in the column headed "Sponsor," thus using form HUD-92013E as a supplemental application form. Subsequently, copies of the same form will be used as a processing form, with HUD personnel entering estimates in the Column headed, "HUD."

### Section C. Food Service: Annual Expenses.

**Line C-1**—Estimate the number of cooks times the average annual salary. The number of waitresses, and other employees needed to operate the dining room are also estimated to arrive at payroll, including payroll tax. When the food service operation is large or complex, a detailed explanation of kinds of staff, numbers of employees, rates of pay, payroll tax, and total payroll for food service, should be shown in an attachment. The annual food cost and cost of supplies is also entered. **Line C-4a**—Dining room furniture expense includes an annual reserve for replacement of dining room furniture and equipment. Estimate the replacement reserve by multiplying furniture cost by 10%.

**Line C-4b**—Return on investment in dining room furniture and equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

**Line C-4c**—Enter the estimated annual allowance for maintenance and repairs to the furniture.

**Line C-7**—Show the total annual food service expense.

**Line C-8**—Estimate the probable number of tenants customarily using the congregated dining facility.

**Line C-9**—Enter the proposed charge per person per month for food service. This charge should be sufficient to provide an annual income at least 3% more than the total food service expense estimated in Line C-7. If a food service concessionaire is contemplated, the proposed terms of the concession shall be completely explained in an attachment.

**Line C-10**—Enter the number of meals per person per day covered by the proposed food service charge.

### Section D. Maid Service: Annual Expense.

**Line D-1**—Enter the number of mains multiplied by the average annual salary to result in annual payroll.

**Line D-2**—Enter the annual expense for cleaning supplies.

**Line D-3 and 4**—If clean sheets are to be provided as part of this service, the word "Laundry" is entered after "other" followed by the annual amount of this expense. Enter other expenses of supplying maid service.

**Line D-5**—Enter the sum of Lines D-1 through D-4. This represents total maid service expense.

**Line D-6**—Enter the estimated number of units using this service.

**Line D-7**—Enter the proposed charge per unit to cover this service.

**Section E. Health Service: Annual Expense.**

**Line E-1**—Enter the anticipated number of nurses needed times the average salary including payroll tax. If the health service operation is large or complex, the sponsor should submit a more detailed estimate of health service payroll in an attachment.

**Line E-2**—Equipment expenses includes an annual reserve for replacement of beds and other furniture and equipment in the infirmary.

**Line E-2**— Estimate the replacement reserve by multiplying equipment cost by 10%.

**Line E-2b**—Return on investment in equipment is estimated by multiplying the furniture cost by the market interest rate for similar investments.

**Line E-2c**—Enter the estimated annual allowance for maintenance and repairs to the equipment.

**Line E-3, 4, 5, and 6**—Enter the annual amounts to be expended for medical supplies, utilities, laundry or linen service, and other expenses of the health service facility.

**Line E**—Enter the sum of lines E-1 through E-6. This represents total health service expense.

**Line E-8**— Enter the number of beds in the infirmary.

**Line E-8**—Enter the average number of patients in the infirmary.

**Line E-9**—Enter the proposed charge per patient or per person. Indicate method of payment.

**Section F. Furniture in Living Units.**

**Line F-1**—Indicate the amount of total annual payments to the leasing company when furniture for some or all of the living units is obtained by the mortgagor by leasing it.

**Line F-2a**—The renting of furniture by tenant must be optional and not a condition of occupancy. For those units in which the project owns the furniture, furniture expense includes an annual reserve for replacement of living unit furniture. Estimate the replacement reserve by multiplying furniture cost by 10%.

**Line F-2b**—Return on investment in furniture is estimated by multiplying furniture cost by the market interest rate for similar investments.

**Line F-2**—Enter the estimated annual allowance for maintenance and repairs to the furniture.

**Line F-3**—Enter the Total Furniture Expense.

**Line F-4**—Indicate the number of units furnished by the mortgagor.

**Line F-5**—Enter the proposed charge per unit per month to cover the furniture expense.

**Section G. Other Non-Shelter Services**

**Line G-1**—Enter the salaries of persons employed to furnish guidance and recreation during the leisure time of the resident's occupancy in the project.

**Lines G-2 and G-3**—Enter the amounts covering any other service or facility included in the proposal that would contribute to the health, comfort and recreation of elderly persons, and specify.

**Lines G-4, 5 and 6**—Enter the charges per person or unit for the respective service of facility.

**Section H. Remarks and Signatures**

Self Explanatory.

**Applicant/Recipient  
Disclosure/Update Report**

U.S. Department of Housing  
and Urban Development  
Office of Ethics

EXHIBIT 6

OMB Approval No. 2535-0101 (exp. 12/31/94) <sup>03/21/95</sup>

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

**Part I Applicant/Recipient Information** Indicate whether this is an Initial Report  or an Update Report

1. Applicant/Recipient Name, Address, and Phone (include area code)		Social Security Number or Employer ID Number
2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)		

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received \$
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**Part II. Threshold Determinations – Applicants Only**

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of \$200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted?  Yes  No

If Yes, you must complete the remainder of this report.

If No, you must sign the certification below and answer the next question.

I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

2. Is this application for a specific housing project that involves other government assistance?  Yes  No

If Yes, you must complete the remainder of this report.

If No, you must sign this certification.

I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

**Part III. Other Government Assistance Provided/Requested**

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V?  Yes  No

If there is no other government assistance, you must certify that this information is true.  
I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

**Part IV. Interested Parties**

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity (\$ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

**Part V. Report on Expected Sources and Uses of Funds**

**Source**

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

**Use**

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) \_\_\_\_\_ Date \_\_\_\_\_

**Certification**

**Warning:** If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed \$10,000 for each violation.

I certify that this information is true and complete.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Public reporting burden** for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

**Privacy Act Statement.** Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, 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. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

**Note:** This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

#### Instructions (See Note 1 on last page.)

**I. Overview.** Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

**A. Applicant disclosure (initial) reports: General.** All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

- Assistance from other government sources in connection with the project,
- The financial interests of persons in the project,
- The sources of funds to be made available for the project, and
- The uses to which the funds are to be put.

**B. Update reports: General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

**C. Applicant disclosure reports: Specific guidance.** The applicant must complete all parts of this disclosure form if either of the following two circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; and

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of \$200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: any other government assistance triggers the requirement. (See Note 6)

If the Application meets neither of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets either of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

**D. Update reports: Specific guidance.** During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by \$250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by \$50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by \$250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by \$250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by \$250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by \$250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by \$250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by \$250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

## II. Line-by-Line Instructions.

### A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.
3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

### B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions 1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

### C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.
2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.
3. State the type of other government assistance (e.g., loan, grant, loan insurance).
4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

#### D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

- (1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
- (2) any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds \$50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures referred to in Section I.D.1., 2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

**5. Part V. Report on Sources and Uses of Funds.** This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds—both from HUD and from any other source—that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

- a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.
- b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.
- c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

**AMPO**

Architect's fee — design  
 Architect's fee — supervision  
 Bond premium  
 Builder's general overhead  
 Builder's profit  
 Construction interest  
 Consultant fee  
 Contingency Reserve  
 Cost certification audit fee  
 FHA examination fee  
 FHA inspection fee  
 FHA MIP  
 Financing fee  
 FNMA / GNMA fee  
 General requirements  
 Insurance  
 Legal — construction  
 Legal — organization  
 Other fees  
 Purchase price  
 Supplemental management fund  
 Taxes  
 Title and recording  
 Operating deficit reserve  
 Resident initiative fund  
 Syndication expenses  
 Working capital reserve  
 Total land improvement  
 Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses  
 Bridge loan interest  
 Development fee  
 Operating deficit reserve  
 Resident initiative fund  
 Syndication expenses  
 Working capital reserve

**Footnotes:**

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated periodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

**Project Data On Occupancy,  
Displacement and Real  
Property Acquisition**

**U.S. Department of Housing  
and Urban Development**  
Office of Community Planning  
and Development

OPTIONAL (GUIDE FORM)

EXHIBIT 8

Note: This information (which may be included in other HUD forms) will assist HUD Community Planning and Development (CPD) staff in reviewing the application for a project and in determining technical assistance needs and monitoring requirements to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and related program requirements. All projects for which real property will be acquired (or was recently acquired) and all projects involving property that is occupied (or was recently occupied) must be reviewed, whether the occupants are required to relocate permanently or have been notified that they will be permitted to remain on-site. Questions about the URA and requests for training or technical assistance should be addressed to the HUD CPD Relocation/ Realty Specialist in the Field Office administering the URA for the area in which the project is located.

**General Project Information**

1. Applicant Name and Address (Street, City, State and zip code)	2. Program/Project No., Name and Address (Street, City, State and zip code)
3. Has site control been secured? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain how.	

**Project Occupancy and Relocation** (Determine occupancy at the time of submission of application or date site identified, if later)

	No. of Units in Property	Units Occupied		Occupants to Move Permanently	Occupants to Remain	
		Owner	Tenant		Total	No. to be Temporarily Relocated
4. Residential						
5. Nonresidential						

6. Has anyone been forced to move from the site in the past 12 months?  Yes  No  Unknown If Yes, explain.

7. Estimated cost of relocation: \$	8. Source of funding
9. Agency administering relocation	10. Contact person (Name) Telephone Number (include area code)
11. Description of relocation experience	

**Acquisition of Real Property**

12. Estimated cost of acquisition: \$	13. Source of funding	14. Number of parcels: Residential Nonresidential
15. Name of acquiring entity:	16. Contact Person (Name)	Telephone Number (include area code)

Remarks:

Completed by: (Name, title and organization)	Telephone Number (include area code)	Date
--	--------------------------------------	------



**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 1. Self-explanatory.
- Item 2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
- Item 3. State use only (if applicable).
- Item 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
- Item 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.
- Item 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
- Item 7. Enter the appropriate letter in the space provided.
- Item 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.
- Item 9. Name of Federal agency from which assistance is being requested with this application.
- Item 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
- Item 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.
- Item 12. List only the largest political entities affected (e.g., State, counties, cities).
- Item 13. Self-explanatory.
- Item 14. List the applicant's Congressional District and any District(s) affected by the program or project.
- Item 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.
- Item 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.
- Item 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.
- Item 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.)

### Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse side for instructions and public burden disclosure.)

**EXHIBIT 10**  
Approved By OMB  
0348-0046

<p><b>Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract</p> <p><input type="checkbox"/> b. grant</p> <p><input type="checkbox"/> c. cooperative agreement</p> <p><input type="checkbox"/> d. loan</p> <p><input type="checkbox"/> e. loan guarantee</p> <p><input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application</p> <p><input type="checkbox"/> b. initial award</p> <p><input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial filing</p> <p><input type="checkbox"/> b. material change</p> <p>For Material Change Only:</p> <p>year _____ quarter _____</p> <p>date of last report _____</p>
<p><b>1. Name and Address of Reporting Entity:</b></p> <p><input type="checkbox"/> Prime    <input type="checkbox"/> Subawardee    Tier _____, if known:</p> <p>_____</p> <p>Congressional District, if known: _____</p>	<p><b>5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:</b></p> <p>_____</p> <p>Congressional District, if known: _____</p>	
<p><b>3. Federal Department/Agency:</b></p> <p>_____</p>	<p><b>7. Federal Program Name/Description:</b></p> <p>_____</p> <p>CFDA Number, if applicable: _____</p>	
<p><b>8. Federal Action Number, if known:</b></p> <p>_____</p>	<p><b>9. Award Amount, if known:</b></p> <p>\$ _____</p>	
<p><b>10a. Name and Address of Lobbying Entity</b> (if individual, last name, first name, MI):</p> <p>_____</p>	<p><b>b. Individuals Performing Services</b> (including address if different from No. 10a.) (last name, first name, MI):</p> <p>_____</p>	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
<p><b>11. Amount of Payment</b> (check all that apply):</p> <p>\$ _____    <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p><b>13. Type of Payment</b> (check all that apply):</p> <p><input type="checkbox"/> a. retainer</p> <p><input type="checkbox"/> b. one-time fee</p> <p><input type="checkbox"/> c. commission</p> <p><input type="checkbox"/> d. contingent fee</p> <p><input type="checkbox"/> e. deferred</p> <p><input type="checkbox"/> f. other; specify: _____</p>	
<p><b>12. Form of Payment</b> (check all that apply):</p> <p><input type="checkbox"/> a. cash</p> <p><input type="checkbox"/> b. in-kind; specify: nature _____</p> <p style="padding-left: 100px;">value _____</p>		
<p><b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b></p> <p>_____</p>		
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
<p><b>15. Continuation Sheet(s) SF-LLL-A attached:</b>    <input type="checkbox"/> Yes    <input type="checkbox"/> No</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____    Date: _____</p>	
<p><b>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>		

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Standard Form 111

**Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).  
Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Disclosure of Lobbying Activities  
~~Continuation Sheet~~

Approved by OMB  
0348-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

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Standard Form-LLL-A

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[NV-020-95-1220-00; N2-5-95]

**Nevada; Temporary Closure of Certain Public Lands in the Winnemucca District for Management of the Summer 1995 Running of the "Fernley 250" Off-Highway Vehicle (OHV) Race****AGENCY:** Bureau of Land Management (Interior).**ACTION:** Temporary closure of certain Public Lands in Washoe, Lyon and Churchill Counties, Nevada on and adjacent to the 1995 "Fernley 250" race course on June 24, 1995. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.**SUPPLEMENTARY INFORMATION:** Certain public lands in the Winnemucca District, Washoe, Lyon and Pershing Counties will be temporarily closed to public access from 0600 hours, June 24, 1995 to 2400 hours June 24, 1995, to protect persons, property and public land resources on and adjacent to the 1995 "Fernley 250" OHV race course. The Sonoma-Gerlach Area Manager is the authorized officer for the 1995 "Fernley 250" OHV race, permit number N2-5-95. These temporary closures and restrictions are made pursuant to 43 CFR Part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washed identified as the 1995 "Fernley 250" OHV race course.

The following public lands administered by the BLM restricted or closed are described as the following:

T. 21 N., R. 24. E., Sec. 36; T. 22 N., R. 24 E., Sec. 2 and 12; T. 23 N., R. 24 E., Sec. 4, 8, 12, 14, 16, 22 and 26; T. 24 N., R. 24 E., Sec. 9, 10, 12, 16, 17, 20, 22 and 28; T. 25 N., R. 24 E., Sec. 36; T. 21 N., R. 25 E., Sec. 6, 8, 12, 14, 20, 22, 28, and 32; T. 20 N., R. 25 E., Sec. 4 and 6; T. 21 N., R. 25 E., Sec. 6, 8, 12, 14, 22 and 28; T. 22 N., R. 25 E., Sec. 18 and 30; T. 23 N., R. 25 E., Sec. 2, 6, 10, 12 and 14; T. 24 N., R. 25 E., Sec. 8, 18, 20, 30, 32, 34 and 36; T. 25 N., R. 25 E., Sec. 30, 31, and 32; T. 21 N., R. 26 E., Sec. 6 and 8; T. 21 N., R. 26 E., Sec. 6; T. 22 N., R. 26 E., Sec. 2, 14, 22, 28, and 32; T. 23 N., R. 26 E., Sec. 4, 6, 10, 22, 26, and 36; T. 24 N., R. 26 E., Sec. 28, 30 and 32.

The following public lands administered by the BLM will be designated as a secondary pit area: T. 23 N., R. 24 E., Sec. 14.

The lands involved are located in the Mount Diablo Meridian and are located north and northeast of Fernley, Nevada. They are within Washoe, Pershing and Lyon Counties. A map showing the exact route of the course is available

from the following BLM office: the Winnemucca District Office, 705 East Fourth Street, Winnemucca, Nevada, 89445, (702) 623-1500.

Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided for in 43 CFR 8360.7  
**FOR FURTHER INFORMATION CONTACT:** Lynn Clemons, 705 East Fourth Street, Winnemucca, Nevada 89445, (702) 623-1500.

Dated: May 25, 1995.

**Ron Wenker,***District Manager, Winnemucca.*

[FR Doc. 95-13604 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-HC-P

[CA-066-05-1610-00]

**Proposed California Desert Conservation Area Plan Amendment, Palm Springs-South Coast Resource Area, Southern California****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of Intent to prepare a proposed plan amendment to the California Desert Conservation Area Plan and environmental assessment.**SUMMARY:** In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.2), notice is hereby given that the Bureau of Land Management (BLM) will prepare an environmental assessment and proposed California Desert Conservation Area plan amendment affecting public lands within the Palm Springs-South Coast Resource Area. The proposed plan amendments would expand two existing Areas of Critical Environmental Concern (ACEC): the Big Morongo Canyon ACEC (No. 50) and the Salt Creek Pupfish/Rail Habitat ACEC (No. 60). The name of the Salt Creek ACEC would also be changed to Dos Palmas ACEC.**DATES:** Citizens are requested to help identify significant issues or concerns related to the proposed plan amendments. Recommendations from citizens regarding additional plan amendments may also be considered, for example, new ACECs or changing land use designations. Written comments must be submitted no later than 30 days from the date of this notice to the following address: Ms. Julia Dougan, Area Manager, Bureau of Land Management Palm Springs-South Coast Resource Area, 63-500 Garnet Avenue, North Palm Springs, CA 92258-2000. Citizens submitting comments will

automatically be included in the mailing list to receive a copy of the Proposed Plan and Environmental Assessment when available.

**FOR ADDITIONAL INFORMATION CONTACT:** If you require additional information or simply would like to be included in the mailing list, contact Ms. Elena Misquez, Bureau of Land Management Palm Springs-South Coast Resource Area, 63-500 Garnet Avenue, North Palm Springs, CA 92258-2000; telephone(619) 251-4826.**SUPPLEMENTARY INFORMATION:** The Big Morongo Canyon ACEC currently includes 3,705 acres of public land just east of Highway 62, and 7 miles north of Interstate 10, San Bernardino County. BLM proposes to expand the ACEC to establish a corridor between the BLM-managed public lands and Joshua Tree National Park, 5 miles due east. Management prescriptions for the ACEC would only apply to the BLM-managed public lands. The proposed ACEC expansion would protect sensitive plant and wildlife habitat and wildlife movement corridors.

The Salt Creek Pupfish/Rail Habitat ACEC (4,288 acres) is located northeast of the Salton Sea and Highway 111 in Riverside County. The ACEC would be renamed as the Dos Palmas ACEC in recognition of the Dos Palmas Ecosystem of which the Salt Creek ACEC is an integral part. The ACEC boundary would be expanded to approximately 17,000 acres to include additional public lands and lands acquired by The Nature Conservancy for the protection of sensitive plant, wildlife and cultural resources. Management prescriptions for the ACEC would not apply to non-TNC private lands within the proposed ACEC boundary. TNC and BLM would continue their acquisition effort from willing sellers within the proposed ACEC boundary.

Public participation is an integral part of the planning and NEPA process in which members of the public are informed of proposed actions affecting the public lands and resources, and are encouraged to submit comments regarding these proposals. For 30-days commencing the date of this notice, citizens are formally requested to identify issues and to suggest alternative or new proposals to be addressed in the proposed plan and environmental assessment. Upon completion of the proposed plan amendment and environmental assessment, a notice of availability will be published in the **Federal Register** followed by a 60-day public comment period. Plan protests filed in accordance with 43 CFR 1610.5-

2 will be accepted for 30-days following issuance of the final Plan. The plan will become effective when all protests have been resolved and a Decision Record is signed by the authorized officer.

**Julia Dougan,**

*Area Manager.*

[FR Doc. 95-13592 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-40-P

[UT-046-05-4210-0-03-5]

**Intent To Prepare Environmental Impact Statement for Proposed Plan Amendment to Virgin River Management Framework Plan, UT**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement (EIS) for a proposed plan amendment to the Virgin River Management Framework Plan (MFP).

**SUMMARY:** This notice is to advise the public that the Bureau of Land Management is preparing an EIS to consider proposed amendments to the land use plan that guides management of public lands within the Dixie Resource Area located in Washington County, Utah. The proposed amendment would consider alternatives for additional opportunities for land tenure adjustments.

**DATES:** The comment period for the preliminary issues and planning criteria identified for the proposed plan amendments will commence with publication of this notice. Comments must be submitted on or before July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Jim Crisp, Area Manager, Dixie Resource Area, 345 E. Riverside Drive, St. George, Utah 84770. Existing planning documents and information are available at the above address or telephone (801) 673-4654, Ext. 201. Comments on the proposed plan amendment should be sent to the above address.

**SUPPLEMENTARY INFORMATION:** The Dixie Resource Area of the Cedar City District, BLM, is proposing to amend the Virgin River MFP, to allow for land tenure adjustments not previously identified in the MFP. The main purpose is to identify and analyze lands that could be exchanged and result in acquisition of special status species habitat including desert tortoise habitat and to consider exchange criteria under which future land exchanges could take place. Lands transferred out of Federal ownership to private, state and municipal interests, as a result of the exchanges would be

available to meet the various needs of the respective parties. Where there are specific uses proposed on lands identified for exchange, those uses will be analyzed. This would include the potential use of public lands as an area for water overflow storage associated with the Sand Hollow Reservoir that is proposed to be built on adjacent private land. An Environmental Impact Statement (EIS) will be prepared to analyze the impacts of this proposal and alternatives. This notice begins the BLM planning scoping process. Additional public meetings and scoping will occur during the development of this EIS.

Preliminary planning issues have been identified to consist of possible adverse impacts to public lands once removed from public ownership, conflicts or controversy surrounding the use of public lands for the "overflow" of water from adjacent private lands, economic impacts, impacts on other natural resource and special status species from land disposal.

The following preliminary planning criteria have been identified and set the parameters under which land exchanges may take place:

1. The action results in a net gain of important and manageable resource values on public land such as Desert Tortoise and other T&E species habitat, crucial wildlife habitat, significant cultural sites, high quality riparian area, live water, or areas key to the maintenance of productive ecosystems.
2. The action ensures the accessibility of public lands in areas where access is needed and cannot otherwise be obtained.
3. The action is essential to allow effective management on public lands in areas where consolidation of ownership is necessary to meet resource management objectives.
4. The action results in acquisition of lands that serve a national priority as identified in Federal policy directives.

The following disciplines will be utilized for interdisciplinary input through out the NEPA process: Archeologist, Lands and Realty Specialist, Wildlife Biologist, Range Conservationist, Botanist, Mineral Specialist and Geologist, Certified Appraiser, Engineer, Planning Specialist, Soils Scientist and Hydrologist.

The present land use plan for the Dixie Resource Area is the Virgin River Management Framework Plan (MFP) prepared in 1977. This land use plan is being revised and updated through preparation of a newer and more comprehensive Dixie Resource Management Plan (RMP) but the completion date is uncertain at this

time. The planning amendment now being initiated will amend either the Virgin River MFP or the Dixie RMP, which ever is the current document at the time this amendment is completed.

**G. William Lamb,**

*Acting State Director.*

[FR Doc. 95-13618 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-DQ-P

[AZ-040-05-1040 00]

**Notice of Meeting for the Gila Box Advisory Committee**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with 43 CFR 1780 that a meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

**DATES:** July 14, 1995, 10 a.m.-4 p.m., Safford District Office.

**ADDRESSES:** BLM Safford District Office, 711 14th Ave., Safford, Arizona.

**SUPPLEMENTARY INFORMATION:** The NCA Advisory Committee was established by Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan, which will be completed by December 1995.

The agenda for the meeting includes (1) refine management actions and (2) finalize preferred alternative.

All meetings are open to the public. Interested persons may make oral statements to the Committee between 10:30 and 11:00 a.m. or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager at least two working days prior to the meeting. Written statements are also accepted at any time during preparation of the draft plan, and will be reviewed by the committee.

Statements should be mailed to Elmer Walls, Team Leader, Gila Resource Area, 711 14th Ave., Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

**FOR FURTHER INFORMATION:** Meg Jensen, Gila Resource Area Manager, or Elmer Walls, Team Leader, 711 14th Ave.,

Safford, Arizona 85546, Telephone (520) 428-4040.

Dated: May 23, 1995.

**William T. Civish,**

*District Manager.*

[FR Doc. 95-13571 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-32-M

[WY-920-41-5700; WYW125896]

**Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming**

May 23, 1995.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW125896 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$10.00 per acre, or fraction thereof, per year and 16<sup>2</sup>/<sub>3</sub> percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW125896 effective January 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

**Pamela J. Lewis,**

*Supervisory Land Law Examiner.*

[FR Doc. 95-13590 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-22-M

[UT-942-4212-13; UTU-65659]

**Notice of Issuance of Land Exchange Conveyance Document; Utah**

**AGENCY:** Bureau of Land Management.

**ACTION:** Exchange of public and private lands.

**SUMMARY:** This action informs the public of the conveyance of 953.95 acres of public land out of Federal ownership. This action will also open 1,803.24 acres of reconveyed land to appropriation under the public land laws including the mining laws, open 557.82 acres of reconveyed land to appropriation under the public land laws, and open 320 acres of reconveyed

land to appropriation under the public land laws including 50% of the minerals under the mining laws.

**FOR FURTHER INFORMATION CONTACT:**

Michael L. Crocker, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145-0155, 801-539-4118.

**SUPPLEMENTARY INFORMATION:**

1. The United States has issued an exchange conveyance document to United States Pollution Control, Inc., for the surface and locatable mineral estates of the following described land pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756; 43 U.S.C. 1716:

**Salt Lake Meridian**

T. 1 S., R. 11 W.,

Sec. 19, lot 4, SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>;

Sec. 20, W<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>.

T. 1 S., R. 12 W.,

Sec. 24, S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>;

Sec. 25, All.

Containing 953.95 acres.

2. In exchange for the lands listed in paragraph 1, the United States received the surface and mineral estates of the following described land:

**Salt Lake Meridian**

T. 4 N., R. 19 W.,

Sec. 23, W<sup>1</sup>/<sub>2</sub>W<sup>1</sup>/<sub>2</sub>, N<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>.

T. 6 S., R. 5 W.,

Sec. 34, SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>.

T. 7 S., R. 5 W.,

Sec. 3, lots 3, 4, S<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>, N<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>.

T. 10 S., R. 6 W.,

Sec. 23, SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>;

Sec. 26, NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, W<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, E<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>;

Sec. 27, NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, S<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>;

Sec. 34, N<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>, SE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>;

Sec. 35, N<sup>1</sup>/<sub>2</sub>, N<sup>1</sup>/<sub>2</sub>S<sup>1</sup>/<sub>2</sub>, S<sup>1</sup>/<sub>2</sub>SW<sup>1</sup>/<sub>4</sub>, SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>.

Containing 1,803.24 acres.

3. The United States received the surface estate of the following land:

**Salt Lake Meridian**

T. 6 S., R. 5 W.,

Sec. 27, SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>;

Sec. 34, NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>.

T. 6 S., R. 6 W.,

Sec. 28, lots 5 and 6, NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>.

T. 40 S., R. 17 W.,

Sec. 4, SW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, NW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>;

Sec. 5, lot 1, SE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>.

Containing 557.82 acres.

4. The United States received the surface and 50% interest in the mineral estates of the following land:

**Salt Lake Meridian**

T. 6 S., R. 5 W.,

Sec. 34, SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>.

T. 7 S., R. 5 W.,

Sec. 4, E<sup>1</sup>/<sub>2</sub>SE<sup>1</sup>/<sub>4</sub>;

Sec. 9, E<sup>1</sup>/<sub>2</sub>NE<sup>1</sup>/<sub>4</sub>, NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>;

Sec. 22, W<sup>1</sup>/<sub>2</sub>NW<sup>1</sup>/<sub>4</sub>.

Containing 320.00 acres.

5. At 8 a.m., on July 5, 1995, the lands described in paragraphs 2, 3, and 4 will be opened to the 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 8:00 a.m. on July 5, 1995 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

6. At 8:00 a.m., on July 5, 1995, the lands described in paragraph 2 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 2 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

7. At 8:00 a.m., on July 5, 1995, the lands described in paragraph 4 will be opened to the operation of the mining laws, applicable to 50% of the mineral estate, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 4 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

8. The purpose of this exchange was to acquire non-federal lands that have high values for wildlife, livestock grazing, and recreational use. This exchange created a more logical and efficient land management pattern that will better serve the public interest.

**Teresa L. Catlin,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 95-13619 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-DQ-M

[4310-OR-100-6332-00; 5-032]

### Availability of Approved Resource Management Plan and Record of Decision

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of the Approved Resource Management Plan and Record of Decision for the Roseburg District, Oregon.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (40 CFR 1550.2), and the Federal Land Policy and Management Act of 1976 (43 CFR 1610.2 (g)), the Department of the Interior, Bureau of Land Management (BLM), Roseburg District provides notice of availability of the Approved Resource Management Plan (ARMP) and Record of Decision (ROD) for the Roseburg District. In addition to describing the decisions, the ARMP will provide the framework to guide land and resource allocations and management direction for the next 10 to 20 years in the Roseburg District. This ARMP supersedes the existing Roseburg District (Drain, Dillard, North Umpqua, South Umpqua) Management Framework Plan, and other related documents for managing approximately 425,588 acres of mostly forested public land and 1,717 acres of non-federal surface ownership with federal mineral estate administered by the Bureau of Land Management in Douglas County in southwestern Oregon.

**ADDRESSES:** Copies of the ARMP/ROD are available upon request by contacting the Roseburg District Office, Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470. This document has been sent to all those individuals and groups who were on the mailing list for the Proposed Roseburg District Resource Management Plan/Final Environmental Impact Statement. The full supporting record for the ARMP is available for inspection in the Roseburg District Office at the address shown above. Copies of draft RMP/EIS and proposed RMP/final EIS

are also available for inspection in the public room on the 7th floor of the BLM Oregon/Washington State Office, 1515 SW Fifth Street, Portland, Oregon; and public libraries throughout Douglas County during normal office hours.

**FOR FURTHER INFORMATION CONTACT:** Cary Osterhaus, District Manager, Roseburg District Office, Bureau of Land Management. He can be reached by telephone number at 503-440-4930 or by FAX at 503-440-4948.

**SUPPLEMENTARY INFORMATION:** The Roseburg District ARMP/ROD is essentially the same as the Roseburg District Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS). Virtually no changes to the proposed decisions have been made, except for some clarifying language in response to the eight protests BLM received on the Roseburg District PRMP/FEIS and as a result of ongoing staff review. The clarifying language concerns:

- Language revisions intended to clarify some management direction.
- Language revisions intended to strengthen the link between the ARMP and the 1994 Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (or Northwest Forest Plan/ROD).
- Revisions that incorporate guidelines issued by the Regional Ecosystem Office since the issuance of the 1994 Record of Decision named above. Such guidelines may clarify or interpret the 1994 Record of Decision.
- Revision of land tenure zone boundary involving 240 acres (.05% of district lands).
- Revision of Bushnell-Irwin Rocks from an ACEC to an ACEC/RNA.

Seven alternatives that encompass a spectrum of realistic management options were considered in the planning process. The final plan is a mixture of the management objectives and actions that, in the opinion of the BLM, best resolve the issues and concerns that originally drove the preparation of the plan and also meet the plan elements or adopt decisions made in the Northwest Forest Plan/ROD. The Northwest Forest Plan/ROD was signed by the Secretary of the Interior who directed the BLM to adopt it in its Resource Management Plans for western Oregon. Further, those decisions were upheld by the United States District Court for the Western

District of Washington on December 21, 1994.

Ecosystem Management and Forest Product Production: The ARMP/ROD responds to the need for a healthy forest ecosystem with habitat that will support populations of native species (particularly those associated with late-successional and old-growth forests). It also responds to the need for a sustainable supply of timber and other forest products that will help maintain the stability of local and regional economies, and contribute valuable resources to the national economy on a predictable and long-term basis. BLM-administered lands are primarily allocated to Riparian Reserves, Late-Successional Reserves, General Forest Management Areas, and Connectivity/Diversity Blocks. An Aquatic Conservation Strategy will be applied to all lands and waters under BLM jurisdiction.

Approximately 89,900 acres will be managed for timber production. The annual allowable sale quantity will be 7.0 million cubic feet (45 million board feet). Standing trees; snags; and down, dead woody material will be retained to contribute to biological diversity.

**Wild and Scenic Rivers:**

Approximately 29 miles of river found eligible for designation and studied by BLM will be found not suitable for designation.

Most BLM-administered lands will remain available for mineral leasing and location of mining claims, but 28 acres will be closed to leasing for oil and gas and geothermal resources, and 5,070 acres will be closed to location of claims.

The Proposed Resource Management Plan will designate or redesignate the following ACECs and RNAs:

Bear Gulch	ACEC/RNA	330 acres
Beatty Creek	ACEC/RNA	331 acres
Bushnell-Irwin Rocks	ACEC/RNA	958 acres
Myrtle Island	ACEC/RNA	30 acres
North Bank	ACEC	6221 acres
North Myrtle Creek	ACEC/RNA	472 acres
North Umpqua River	ACEC	1620 acres
Red Pond		

ACEC/RNA  
134 acres  
Tater Hill  
ACEC/RNA  
280 acres  
Umpqua River Wildlife Area  
ACEC  
947 acres

There were no potential ACEC areas identified that met the Bureau ACEC criteria of relevance and importance that are not included in whole or in part in the ARMP/ROD described above.

Off-Highway-Vehicle (OHV) Use: The ARMP/ROD makes the following designations for OHV management in the District: no lands will be open; 423,422 acres will be restricted to designated existing roads and trails and/or seasonally closed; and 2,166 acres will be closed to all use, except for specified administrative or emergency uses. The closed areas include administratively withdrawn areas such as progeny test sites and various ACECs. In addition, the ARMP/ROD provides for road closures to meet ecosystem management objectives. Such closures may be permanent or seasonal, and will be effected by use of signs, gates, barriers or total road deconstruction and site restoration.

Land Tenure Adjustment: The ARMP/ROD identifies approximately 35,930 acres of BLM-administered lands that will be retained in public ownership; 380,989 acres of BLM-administered lands that may be considered for exchange under prescribed circumstances; and 13,352 acres of BLM-administered lands that may be available for sale or disposal under other authorized processes. The ARMP also provides criteria for the acquisition of lands, or interests in lands, where such acquisition would meet objectives of the various resource programs. The plan allocates approximately 1,577 acres as right-of-way exclusion areas.

Special Recreation and Visual Resource Management Areas: The ARMP/ROD identifies three Special Recreation Management Areas (SRMA), including one existing (North Umpqua River) and two new (Cow Creek and Umpqua River). The existing SRMAs total approximately 1,620 acres and the new SRMAs total approximately 3,950 acres. The ARMP/ROD allocates approximately 1,309 acres of BLM-administered lands for 29 existing or potential recreation sites. The plan also allocates lands for 19 existing or potential trails, totaling approximately 49 miles. The plan also identifies management objectives for four visual resource management classifications.

Dated: May 24, 1995.

**David R. Baker,**

*Acting District Manager.*

[FR Doc. 95-13579 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-33-P

[CO-935-1430-010; COC-58110]

### Proposed Withdrawal: Opportunity for Public Meeting; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 175 acres of public lands for 20 years to protect and maintain existing and planned recreational facilities on 3 recreation sites. This notice closes these lands to location and entry under the general land laws, including the mining laws, for up to two years. The lands will remain open to mineral leasing.

**DATES:** Comments on this proposed withdrawal or requests for public meeting must be received on or before September 5, 1995.

**ADDRESSES:** Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215-7076.

**FOR FURTHER INFORMATION CONTACT:** Doris Chelius, 303-239-3706.

**SUPPLEMENTARY INFORMATION:** On May 12, 1995, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights:

#### Sixth Principal Meridian

Collegiate Peaks Scenic Overlook

T. 14 S., R. 78 W.,  
Sec. 23. E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ ,  
and N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

Sand Gulch Campground

T. 16 S., R. 70 W.,  
Sec. 21. SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 28. W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , and  
NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ .

Bank Campground

T. 16 S., R. 70 W.,  
Sec. 33. SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
N $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
and NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .

The areas described aggregate approximately 175 acres in Chaffee and Fremont Counties.

The purpose of this withdrawal is to protect these recreation areas and the

improvements constructed for recreation purposes.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3-1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, these lands will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage these lands.

**Jenny L. Saunders,**

*Chief, Branch of Realty Programs.*

[FR Doc. 95-13591 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-JB-P

### Bureau of Reclamation

#### Draft Environmental Impact Statement for Proposed Acreage Limitation and Water Conservation Rules and Regulations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice to extend comment period.

**SUMMARY:** The Bureau of Reclamation is extending the comment period published in 60 FR 20114, Apr. 24, 1995, in response to a number of requests from the public for an extension of the comment period. The extension will allow the public more time to prepare comments concerning the draft environmental impact statement (DEIS) for the proposed rulemaking, Acreage Limitation and Water Conservation Rules and Regulations.

**DATES:** Written comments for inclusion in the official record must be postmarked no later than June 26, 1995.

**ADDRESSES:** Written comments should be mailed to: Mr. Ronald J. Schuster, Westwide Settlement Manager, Bureau of Reclamation, P.O. Box 25007 (Mail Code D-5010), Denver, Colorado 80225.

Access to the dedicated toll-free telephone number 1-800-861-5443, has been extended through June 26, 1995, for those wishing to make oral

comments on the DEIS. Comments will be recorded on tape and transcribed by a court reporter, and will be part of the official record. Statements are limited to 10 minutes and must include the commentor's name in order to be included in the official record. Address and affiliation are optional.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald J. Schuster, Westwide Settlement Manager, Bureau of Reclamation, P.O. Box 25007 (Mail Code D-5010), Denver, Colorado 80225, telephone (303) 236-9336 ext. 237.

**SUPPLEMENTARY INFORMATION:** An identical notice is published in this **Federal Register** regarding extension of comment period on the proposed rules and regulations implementing the Reclamation Reform Act of 1982.

Dated: May 31, 1995.

**Daniel P. Beard,**  
*Commissioner.*

[FR Doc. 95-13692 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-94-P

### Travel Management Plan for Owyhee Reservoir, Owyhee Project, Oregon

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation (Reclamation), in accordance with the provisions of the Off-road Vehicle Use regulation and Executive Orders 11644 and 11989, is implementing a Travel Management Plan for Reclamation lands in the vicinity of Owyhee Reservoir, Oregon. The purpose of the Travel Management Plan is to provide appropriate and safe access to Reclamation lands.

**EFFECTIVE DATE:** The effective date of the travel management plan is June 5, 1995.

**ADDRESSES:** Copies of the Owyhee Reservoir Resource Management Plan (RMP) Travel Management Plan map are available at:

- Bureau of Reclamation, Snake River Area Office, 214 Broadway Avenue, Boise, ID 83702.
- Malheur County Courthouse, Vale, Oregon, 97918.
- Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, OR 97918.
- Lake Owyhee State Park, PO Box 247, Adrian, OR 97901.

**FOR FURTHER INFORMATION CONTACT:** Steve Dunn, Natural Resource Specialist, Bureau of Reclamation, Snake River Office, 214 Broadway Avenue, Boise, ID, 83702, (208) 334-9844.

**SUPPLEMENTARY INFORMATION:** In April 1994 Reclamation completed a RMP and Environmental Assessment/Finding of No Significant Impact for approximately 26,190 acres of land and 12,740 acres of water surface at Owyhee Reservoir in southeastern Oregon. The RMP was developed through extensive public involvement and interagency consultation and coordination. To meet the goal of providing appropriate and safe access to Reclamation lands consistent with Reclamation's Off Road Vehicle use regulations in 43 CFR part 420, a Travel Management Plan was incorporated into the RMP.

The Travel Management Plan designates all Reclamation lands at Owyhee Reservoir closed to motorized travel except for those roads and areas specifically designated as "open" for such use. Areas and roads designated as "open" are shown on Reclamation's Owyhee Reservoir RMP Travel Management Plan map in the RMP and available separately at the addresses above. This designation of "open" lands at Owyhee reservoir supersedes the Notice of Off-Road Vehicle Use published in 39 FR 46951, Aug. 9, 1979.

Dated: May 19, 1995.

**John W. Keys, III,**  
*Regional Director.*

[FR Doc. 95-13573 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-94-M

### Fish and Wildlife Service

#### Environmental Impact Statement for the Reintroduction of Grizzly Bears to the Bitterroot Mountains of Central Idaho and Western Montana

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

**ACTION:** Notice of public open houses.

**SUMMARY:** The Fish and Wildlife Service (Service) announces its intention to hold public scoping sessions in the States of Idaho and Montana, and in one major city elsewhere, to further identify issues and develop management alternatives for the Environmental Impact Statement (EIS) for the reintroduction of grizzly bears to the Bitterroot Mountains of central Idaho and western Montana. This notice is being furnished as required by the National Environmental Policy Act (NEPA) regulations (CFR 1501.7) to obtain input from other agencies and the public on issues and alternatives to be considered in the EIS.

**DATES:** Public scoping sessions will be held in Boise, Grangeville, and Orofino, Idaho; Hamilton, Helena, and Missoula, Montana; and Salt Lake City, Utah, from

July 5 through July 11, 1995. The times and locations of the open houses will be announced in the local media and in mailings to interested public. Written comments should be received by July 20, 1995.

**ADDRESSES:** Questions and comments concerning these public scoping sessions should be addressed to Dr. John Weaver, Team Leader, Bitterroot Grizzly Bear Environmental Impact Statement, U.S. Fish and Wildlife Service, P.O. Box 5127, Missoula, Montana 59806.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Weaver (see **ADDRESSES** section) at telephone (406) 329-3254.

#### **SUPPLEMENTARY INFORMATION:**

Historically, the grizzly bear (*Ursus arctos horribilis*) was a widespread inhabitant of the Bitterroot Mountains in central Idaho and western Montana. The last documented grizzly bear was killed in the late 1930's, although occasional unverified reports persist. In 1975, the grizzly bear was listed as a threatened species in the 48 contiguous States under the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). An interagency task force, working with a citizen's involvement group, drafted a chapter on grizzly bear recovery in the Bitterroot Ecosystem. Several scoping meetings were held in local communities of central Idaho and western Montana to gather public comments. The chapter developed for the Grizzly Bear Recovery Plan calls for an EIS to evaluate a full range of grizzly bear recovery alternatives, including the reintroduction of four to six grizzly bears per year for 5 years to the wilderness areas of central Idaho as an experimental, nonessential population under section 10(j) of the Endangered Species Act.

During scoping meetings concerning the chapter on the Bitterroot Ecosystem and the Notice of Intent to complete an EIS (60 FR 2399), the public identified several issues. These included recovery needs of the grizzly bear, recovery options and statutory classification, boundaries of the recovery zone, location and costs of a reintroduction program, management authority, concern for human safety, control of nuisance bears, and possible restrictions on human uses of public and private lands. Preliminary alternatives suggested to date include—(1) no action (natural recolonization from other grizzly bear populations), (2) reintroduction of grizzlies as a threatened species (management similar to other grizzly bear populations), and (3) reintroduction of grizzlies as an experimental, nonessential population

(greater management flexibility under a special rulemaking). Additional alternatives may be identified through the upcoming series of public scoping sessions for analysis in the draft EIS.

A scoping newsletter details the EIS process; issues and alternatives identified to date; locations, dates, and times of open houses, and how to become involved. A 16-page booklet with answers to citizens' questions about grizzly bear recovery in the Bitterroot Ecosystem is available and will be inserted in the newsletter. Individuals who previously requested information on grizzly bear recovery in the Bitterroot Ecosystem will receive copies.

Other interested persons can obtain copies of these materials and be placed on the mailing list by writing to Dr. John Weaver (see ADDRESSES section).

Dated: May 25, 1995.

**Terry T. Terrell,**

*Deputy Regional Director, Region 6.*

[FR Doc. 95-13488 Filed 6-1-95; 8:45 am]

BILLING CODE 4310-55-M

### Notice of Intent To Prepare an Environmental Impact Statement for a Permit Application to Incidentally Take the Endangered Karner Blue Butterfly in the State of Wisconsin

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

**ACTION:** Notice of intent and meetings.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared regarding an application from the Wisconsin Department of Natural Resources (WDNR), Madison, Wisconsin, for a permit to allow the incidental take of the Karner blue butterfly (*Lycaeides melissa samuelis*) in the State of Wisconsin with an accompanying habitat conservation plan (HCP). This notice describes the conservation plan (proposed action) and possible alternatives, invites public participation in the scoping process for preparing the EIS, and identifies the Service official to whom questions and comments concerning the proposed action may be directed. Three public scoping meetings will be held in the State of Wisconsin on the following dates at the indicated locations and times:

1. June 27, 1995; Wisconsin Rapids, WI at City Hall, 444 W. Grand Ave., Council Chambers; 3 p.m. to 6 p.m.
2. June 28, 1995; Siren, WI at the Burnett County Government Center,

7410 Cty. Rd. K, Room 165; 3 p.m. to 6 p.m.

3. June 29, 1995; Eau Claire, WI at the South Middle School, 2115 Mitscher Ave., Auditorium; 3 p.m. to 6 p.m.

There will be a presentation at 3 p.m. at each meeting which will address the Karner blue butterfly, the background and history of the HCP development process, the information available on the presence of this species in Wisconsin, activities which may be affected by their presence, and strategies to conserve the species while allowing land use activities to continue. Submission of written and oral comment and questions will be accepted at the scoping meetings. Written comments regarding EIS scoping also may be submitted by August 30, 1995, to the address below. **FOR FURTHER INFORMATION CONTACT:** Janet M. Smith, Field Supervisor, U.S. Fish and Wildlife Service, 1015 Challenger Court, Green Bay, Wisconsin 54311.

**SUPPLEMENTARY INFORMATION:** The Karner blue butterfly was listed by the Service as an endangered species in December, 1992. Because of its listing as endangered, the Karner blue butterfly population is protected by the Endangered Species Act's (Act) prohibition against "taking." The Act defines "take" to mean: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct. "Harm" is further defined by regulation as any act that kills or injures wildlife including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

However, the Service may issue permits to carry out prohibited activities involving endangered and threatened species under certain circumstances. Regulations governing permits for endangered and threatened wildlife are at 50 CFR 17.22, 17.23, and 17.32.

The WDNR is preparing to apply to the Service for an incidental take permit pursuant to Section 10(a)(1)(B) of the Act, which authorizes the issuance of incidental take permits to non-Federal landowners. The largest populations of the Karner blue butterfly in the nation occur in this State. This permit would authorize the incidental take of the Karner blue butterfly, and, possibly, associated threatened or endangered species addressed in the HCP, during the course of conducting otherwise lawful land use or development activities on public and private land in

the State of Wisconsin. Although public and private entities or individuals have participated in development of the HCP and may benefit by issuance of an incidental take permit, the WDNR has accepted the responsibility of coordinating preparation of the HCP, submission of the permit application and coordination of the preparation and processing of an EIS for Service review and approval. The action to be described in the HCP is a program that will ensure the continued conservation of the Karner blue butterfly in the State of Wisconsin, while resolving potential conflicts that may arise from otherwise lawful activities that may involve this species and its habitat on non-Federal lands in the State of Wisconsin. The environmental impacts which may result from implementation of a conservation program described in the HCP or as a result of implementing other alternatives will be evaluated in the EIS. The WDNR and more than 30 other persons or entities are involved in the process of information gathering, development and preparation of the Section 10(a)(1)(B) permit application, NCP, and the EIS, which is being developed concurrently.

Development of the HCP will involve a public process that includes open meetings of the HCP team and its advisory subcommittees. Those involved in this effort include other State and Federal agencies; counties; towns; industries, utilities, foresters, lepidopterists and biologists; and representatives of various environmental and recreational use organizations. Conservation strategies to be applied to the lands will differ depending on the landowner, ownership objective and management capability. It is anticipated that implementation of the conservation strategies will be through an implementation agreement or cooperative agreement entered into by the landowner and the WDNR.

#### Alternatives

##### *I. Statewide HCP and Incidental Take Permit (Proposed Action)*

This alternative, the proposed action, seeks to address all lands which constitute potential Karner blue butterfly habitat and associated land uses in the State of Wisconsin, whether publicly or privately owned or large or small in size. Such lands include utility, highway and railroad rights-of-way; private and publicly owned forest lands; other publicly owned lands such as parks, fisheries and wildlife areas, and recreational use areas; and private and publicly owned land subject to other

land uses including agriculture and development. This approach seeks to address conservation through a "grassroots" landowner effort. Individual conservation strategies of landowners may include:

1. Forest management and production strategies designed to assure no net loss of Karner blue butterfly habitat. However, specific areas of habitat may change;

2. Continued management of habitat through a maintenance and management scheme. Information on this species to date indicates that it is dependent on a disturbance regime, whether natural or otherwise. The species is found in such areas as tank trails on military training areas, timber sale or timber regeneration areas, highway or utility rights-of-way, and agricultural lands. There is evidence that some past and current practices in agriculture, forest management, military operations, right-of-way management, and wildlife management have been beneficial to the species. A "protection" strategy alone may result in the loss of habitat due to the natural maturation of other vegetation;

3. Barrens management which entails a scheme designed to maintain or restore barrens communities which may constitute habitat for a variety of species including the Karner blue butterfly;

4. Right-of-way maintenance regimes designed to minimize adverse effects on the Karner blue butterfly or enhance habitat through modification in mowing or clearing regimes, or burning;

5. Agricultural practices designed to maintain habitat; and

6. Other practices or strategies designed to maintain and, possibly, enhance habitat as science or practice confirms their effectiveness.

This alternative would incorporate the concept of "adaptive management." As science and conservation strategies evolve or demonstrate a need to change, the landowners would adapt or modify the conservation strategy as needed. Therefore, as science and information progress, so may the conservation strategies and efforts under the HCP and permit.

This alternative seeks authority for a long-term incidental take permit. The HCP will assure continued conservation measures as well as monitoring and reporting procedures, as required for issuance of an incidental take permit by the Service.

Service issuance of an incidental take permit will authorize land use activities to proceed without violating the Act. Landowners may participate in the HCP through cooperative agreements, certificates of inclusion, involvement in

one of the several WDNR private lands assistance programs, other cooperative programs by partners or participants in this conservation effort, or exemption from regulation based on the conservation program established under the HCP and permit. A coarse estimate of potential Karner blue butterfly habitat in the State would include about 25 percent of its acreage. About 12 percent may have a high potential to be Karner blue butterfly habitat.

#### *II. Development of an HCP and Application for an Incidental Take Permit by one Landowner or a Consortium of Landowners or Organizations Not Constituting a Statewide Effort*

This alternative may involve a single landowner, such as the WDNR or an industrial forest landowner. It may also involve a group of landowners, such as several industrial forest landowners or utilities. Any conservation strategy addressed in the proposed action alternative could be applied by the landowners involved under the same or similar facts or motives. Conservation strategies not discussed earlier could also be developed.

This alternative requires separate HCP development and application processes. Naturally, this approach would require separate permit review processes by the Service with the necessity of conducting separate environmental impact review procedures and documents.

Implementation and oversight would not likely involve the WDNR, which is the endangered resource regulatory agency for the State of Wisconsin, but would require oversight and implementation as described in the implementation agreements and permits.

#### *III. Development of Short-term Incidental Take Permits*

This alternative would seek to address the conservation program for this species for a period which is shorter than that anticipated in the proposed action alternative, which could extend for up to 30 years for willing landowners. Conservation strategies may be the same or similar as in the proposed action alternative, with the possibility of addressing the same land ownership, or some smaller element of land ownership.

#### *IV. No Action Alternative*

Under the No Action Alternative, no section 10(a)(1)(B) permit(s) would be issued and activities involving the take of the Karner blue butterfly would remain prohibited under Section 9 of the Act. Activities that would avoid the

take of the butterfly could continue. Proposed activities on non-Federal land that may affect the butterfly would require submitting an individual section 10(a)(1)(B) permit application to the Service. If a Federal action (e.g., proposed roadway) would affect the butterfly, incidental take could be allowed through the Section 7 consultation process and development of an incidental take statement if the action were determined to not jeopardize the continued existence of the species.

#### **Issue Resolution and Environmental Review**

The primary issue to be addressed during the scoping and planning process for the HCP and EIS is how to resolve potential conflicts between development or land management practices and listed (Federal or State) species in the State of Wisconsin. A tentative list of issues, concerns and opportunities has been developed. There will be a discussion of the potential effect, by alternative, which will include the following areas:

(1) Karner blue butterfly and its habitat.

(2) Other federally listed endangered or threatened species in the state of Wisconsin.

(3) State listed endangered and threatened species in the State of Wisconsin.

(4) Effects on other species of flora and fauna.

(5) Socioeconomic effects.

(6) Use of state, county and local public lands for Karner blue butterfly conservation.

(7) Use of privately owned lands for Karner blue butterfly conservation.

(8) Use of Federal lands.

Environmental review of the permit application will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the statement. Comments and participation in this scoping process are solicited.

The draft environmental impact statement should be available to the public in the spring of 1996.

**William F. Hartwig,**

*Regional Director, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, MN.*

[FR Doc. 95-13622 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-55-M

**Notice of Availability of a Draft Recovery Plan for the June Sucker for Review and Comment**

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

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the June sucker (*Chasmistes lioris*), a fish inhabiting Utah Lake and the Provo River in Utah. The Service solicits review and comment from the public on this draft recovery plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 4, 1995 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Ecological Services, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Written comments and materials regarding this draft recovery plan should be sent to the Field Supervisor at the Salt Lake City address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Henry Maddox (see **ADDRESSES** above) at telephone (801) 524-4430.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and

cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The June sucker (*Chasmistes lioris*) occurs only in Utah Lake and the Provo River in central Utah, although the species historically occupied the Spanish Fork River and possibly other tributaries of Utah Lake. This once common fish has declined in abundance due to a variety of human activities that have significantly altered the lake and river habitat in which the species occurs.

The June sucker was listed under the Act as an endangered species on March 31, 1986 (51 FR 10857), due to the precipitous decline in this once common fish. The species decline is believed to result from significant alterations in the species' lake and river habitat. Dams and water diversions constructed on the rivers flowing into Utah Lake have reduced water flows, altered flow regimes within the river, and dramatically increased fluctuations in the level of the lake. Increased pollution and nutrient inflow caused by urban development surrounding Utah Lake, have degraded water quality within the lake and destroyed shoreline vegetation. In addition, several species of nonnative predacious fish that may prey upon juvenile June suckers have been introduced into Utah Lake. The combination of these factors has apparently reduced the survival of young fish to the point that most fish found today are between 20 and 43 years old.

The goal of the recovery plan is increase reproduction and survival of young June sucker to increase population numbers and ensure the species' survival. Recovery actions recommended to facilitate recovery of the species include identification of habitat requirements, coordination of efforts to restore required water flows and other appropriate habitat conditions, and identification and

amelioration of the effects of predation by nonnative fish species.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified in the DATES section above will be considered prior to approval of the recovery plan.

**Authority**

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: May 23, 1995.

**Terry T. Terrell,**

*Deputy Regional Director, Denver, Colorado.*

[FR Doc. 95-13572 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-55-M

**Klamath River Basin Fisheries Task Force; Meeting**

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

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

**DATES:** The Klamath River Basin Fisheries Task Force will meet from 8:00 a.m. to 5:30 p.m. on Tuesday, June 20, 1995, and from 8:00 a.m. to 1:00 p.m. on Wednesday, June 21, 1995.

**PLACE:** The meeting will be held at the Oregon Institute of Technology (Shasta Conference Center), 2301 Campus Drive, Klamath Falls, Oregon 97603.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1030 South Main), Yreka, California 96097-1006, telephone (916) 842-5763.

**SUPPLEMENTARY INFORMATION:** The principal agenda items at this meeting of the Klamath River Basin Fisheries Task Force will be to recommend a flow study approach for the Klamath River Basin; to recommend projects for funding through Federal and State and fishery restoration grants in the 1996 fiscal year; to decide how to proceed with a draft restoration plan amendment addressing issues on the upper Klamath River Basin; to solicit nominations for awards to recognize private landowner efforts towards restoration of anadromous fish in the Klamath Basin.

For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: May 24, 1995.

**Thomas Dwyer,**

*Acting Regional Director.*

[FR Doc. 95-13625 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-55-M

## National Biological Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest for the reasons given below. Approval has been requested by June 30, 1995. Comments and suggestions on the proposal should be made directly to the bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1089-NBS1), Washington, DC 20503; telephone 302-395-7340.

*Title:* Technology Transfer Planning—client response.

*OMB Approval Number:* 1089-NBS1.

*Abstract:* With the transfer of the National Ecology Research Center of the U.S. Fish and Wildlife Service to the National Biological Service in Fiscal Year 1994 a need exists to redirect technology transfer efforts for the Instream Flow Incremental Methodology (IFIM) and the Habitat Evaluation Procedure (HEP). A sample of clients drawn from past training participants will be asked to identify their priority needs related to enhancements for continued use of these computer based technologies.

*Reason for Expedited Review:* To comply with a fiscal year technology upgrade deadline and because of the hardship which would be imposed on agency trainers by failure to implement this new requirement before the end of the current quarter.

*Frequency:* On occasion.

*Description of Respondents:* Training participants and current users of the Instream Flow Incremental Methodology and Habitat Evaluation Procedures Technologies.

*Estimated Completion Time:* 30 minutes.

*Annual Responses:* 1200.

*Annual Burden Hours:* 600.

*Bureau Clearance Officer:* Don Minnich 202-482-4838.

Dated: May 15, 1995.

**F. Eugene Hester,**

*Deputy Director.*

[FR Doc. 95-13588 Filed 6-2-95; 8:45 am]

BILLING CODE 4310-DP-M

## INTERSTATE COMMERCE COMMISSION

### Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927-6203.

Comments on the following assessment are due 15 days after the date of availability:

AB-439X, Dallas Area Rapid Transit—Abandonment Exemption—In Dallas County, Texas. EA available 5/22/95.

AB-55 (Sub-No. 506X), CSX Transportation, Inc.—Abandonment—in Fannin County, Georgia. EA available 5/25/95.

Comments on the following assessment are due 30 days after the date of availability:

AB-433 (Sub-No.2X), Idaho Northern & Pacific Railroad Company—Abandonment and Discontinuance of Trackage Rights In Washington and Adams Counties, Idaho. EA available 5/16/95.

AB290 (Sub-No. 3X), Central Railroad Company of Indianapolis—Discontinuance of Service Exemption—Between Kokomo and Argos in Howard, Miami, Fulton and Marshall Counties, Indiana; and

AB290 (Sub-No. 168X) Norfolk and Western Railway Company—Abandonment Exemption—Between Kokomo and Rochester in Howard, Miami and Fulton Counties, Indiana. EA available 5/19/95.

AB-441 (Sub-No. 1X), SWKR Operating Co., Inc.—Abandonment Exemption—In Cochise County, AZ. EA available 5/19/95.

AB-167 (Sub-No. 1146X), Consolidated Rail Corporation—Abandonment Exemption—In Clearfield and Centre Counties, Pennsylvania. EA available 5/26/95.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 95-13647 Filed 6-2-95; 8:45 am]

BILLING CODE 7035-01-P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department of Justice policy and 28 CFR 50.7, notice is hereby given that on May 18, 1995, a proposed consent Decree in *United States v. Insulation & Environmental Services, Inc., et al.*, Case No. 1:94-CV-360, was lodged in the United States District Court for the Western District of Michigan. The Complaint filed by the United States alleged violations of the Clean Air Act ("the Act"), 42 U.S.C. 7401 *et seq.* The Consent Decree requires Defendant IESI to comply with the NESHAPs for asbestos and to pay a civil penalty of \$1,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. Insulation & Environmental Services, Inc., et al.*, D.J. Ref. No. 90-5-2-1-1850.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Western District of Michigan, 330 Ionia NW., Fifth Floor, Grand Rapids, MI 49503 (contact Assistant United States Attorney W. Francesca Ferguson); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604-3590 (contact Assistant Regional Counsel Robert Thompson); and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, 202-624-0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G St. NW., 4th Floor, Washington, DC 20005, telephone (202) 624-0892. For a copy of the Consent Decree please enclose a check in the amount of \$3.75

(25 cents per page reproduction costs) payable to Consent Decree Library.

**Joel M. Gross,**

*Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 95-13585 Filed 6-2-95; 8:45 am]

BILLING CODE 4410-01-M

### Notice of Lodging of Settlement Agreement in *In re Edward Cyril Niedermeyer*

Notice is hereby given that a proposed Settlement Agreement between the United States on behalf of the United States Environmental Protection Agency ("EPA") and the Trustee of the bankruptcy estate in *In re Edward Cyril Niedermeyer* was lodged on May 18, 1995, with the United States Bankruptcy Court for the District of Oregon in *In re Edward Cyril Niedermeyer*, No. 393-34353-elp7 (Bankr. D. Ore.), No. 1-91-00100. Under the Agreement, the United States will have an allowed general unsecured claim of \$10,000,000. Any payments received by EPA will be used to implement response action at the Pacific Wood Treating Site in Ridgefield, Washington under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, or by the State of Washington, Department of Ecology, pursuant to a cooperative agreement with EPA, to implement response action at the Site pursuant to state law. The Settlement Agreement also resolves the United States' proof of claim on behalf of EPA filed under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*

The Department of Justice will receive comments relating to the proposed Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re Edward Cyril Niedermeyer*, D.J. Ref. No. 90-7-1-743. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the District of Oregon, 312 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205; the Region X Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Consent Decree

Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202-624-0892). A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Settlement Agreement without attachments, please enclose a check in the amount of \$1.50 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 95-13583 Filed 6-2-95; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Department of Justice policy and 28 CFR 50.7 notice is hereby given that on May 18, 1995, a proposed Consent Decree in *United States v. City of North Olmstead et al.*, Case No. 1:95CV1109, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Water Act ("the Act"), 33 U.S.C. 1319(b). The Consent Decree requires the City of North Olmstead to comply with its applicable NPDES permit, the Clean Water Act, the Administrative Order issued by U.S. EPA on July 31, 1991, OEPA's Administrative Order of June 21, 1991, and Chapter 6111 of the Ohio Revised Code. North Olmstead has also agreed to make certain equipment changes at its plant by July 1, 1995, submit reports to U.S. EPA concerning any voluntary sewer rehabilitation which North Olmstead undertakes, and submit all reports required by its NPDES permit to U.S. EPA. The Consent Decree also requires North Olmstead to pay a civil penalty of \$175,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. City of North Olmstead et al.*, D.J. Ref. No. 90-5-1-1-3949.

The proposed Consent Decree may be examined at any of the following offices: (1) the United States Attorney for the Northern District of Ohio, Room 208 U.S. Courthouse, 2 South Main St,

Akron, Ohio 44308 (contact Assistant United States Attorney James L. Bickett); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590 (contact Assistant Regional Counsel Padimavati Klejwa); and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202-624-0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone (202) 624-0892. For a copy of the Consent Decree please enclose a check in the amount of \$3.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

**Joel M. Gross,**

*Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 95-13584 Filed 6-2-95; 8:45 am]

BILLING CODE 4410-01-M

### National Institute of Corrections

#### Advisory Board Meeting

Time and date: 10:30 a.m., Tuesday, June 20, 1995.

Place: Charleston Marriott Hotel, 4770 Marriott Drive, Charleston, South Carolina.

Status: Open.

#### Matters To Be Considered

Office of Justice Programs update on the Violent Offender and Truth In Sentencing Grant Program, update on the Crime Bill provisions assigned to NIC, NIC Information Center report on state legislative actions on truth In sentencing, policy statement on emerging issues in corrections, report on the reorganization and restructuring of NIC, plans for future Advisory Board meetings, and NIC's budget and funding.

#### CONTACT PERSON FOR FURTHER INFORMATION:

Larry Solomon, Deputy Director, (202) 307-3106, ext. 155.

**Morris L. Thigpen,**  
*Director.*

[FR Doc. 95-13562 Filed 6-2-95; 8:45 am]

BILLING CODE 4410-36-M

**DEPARTMENT OF LABOR****Employment and Training  
Administration**

[TA-W-30, 904]

**Alliant Techsystems, Inc., A/K/A  
Hercules, Inc. Kenvil, NJ; Amended  
Certification Regarding Eligibility to  
Apply for Worker Adjustment  
Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 USC. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 28, 1995, applicable to all workers of Alliant Techsystems, Incorporated, Kenvil, New Jersey engaged in employment related to the production of propellants. The notice was published in the Federal Register on May 9, 1995 (60 FR 24653).

New information received from the State Agency show that some of the workers at Alliant Techsystems, Incorporated had their unemployment insurance (UI) taxes paid to Hercules, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Alliant Techsystems, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA-W-30,904 is hereby issued as follows:

"All workers of Alliant Techsystems, Incorporated, a/k/a Hercules, Inc., Kenville, New Jersey engaged in employment related to the production of propellants who became totally or partially separated from employment on or after March 30, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 23rd day of May 1995.

**Victor J. Trunzo,**

*Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 95-13567 Filed 6-2-95; 8:45 am]

BILLING CODE 4510-30-M

**Mine Safety and Health Administration****Petitions for Modification**

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. H & S Coal Company**

[Docket No. M-95-67-C]

H & S Coal Company, 534 Melrose Street, Marion Heights, Pennsylvania 17832 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-08447) located in Northumberland County, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) in transporting persons without installing safety catches or other no less effective devices but instead use a increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**2. C. H. & S. Coal Company**

[Docket No. M-95-68-C]

C. H. & S. Coal Company, Inc., P.O. Box 159, Birchleaf, Virginia 24220 has filed a petition to modify the application of 30 CFR 75.1711-2 (sealing of slope or drift openings) to its Mine No. 3 (I.D. No. 44-01246) located in Scott County, Virginia. The petitioner proposes to install bat gates on openings at Mine No. 3 and Portals C in addition to the two bat gates already installed by the Virginia Department of Mines, Minerals and Energy at openings Portal A and Portal B in 1987. The petitioner states that the U.S. Forest Service has information that would verify that bat-friendly angle-iron gates have proven highly successful in ensuring both human and bat safety throughout the country; and that they would be willing to provide gate plans for review and to take responsibility for the maintenance and upkeep of the gates including responsibility for the public's safety. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**3. Bear Coal Company**

[Docket No. M-95-69-C]

Bear Coal Company, P.O. Box 518, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Bear No. 3 Mine (I.D. No. 05-03787) located in Gunnison County, Colorado. Due to a roof fall in the "C" seam at crosscuts #25 and #26, entries #0 and #1 impeding travel to two (2) permanent seals the area cannot be traveled safely. The petitioner proposes to establish monitoring stations to measure the quantity and quality of air entering and leaving the affected area; to have a certified person examine the

stations on a daily basis and record the results in a book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**4. Clinchfield Coal Company**

[Docket No. M-95-70-C]

Clinchfield Coal Company, 1600 Laidley Tower, P.O. Box 553, Charleston, West Virginia 25322 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its McClure No. 2 Mine (I.D. No. 44-04946) located in Dickenson County, Virginia. Due to extreme restrictions on the intake airways, the petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used as intake air courses to ventilate the active working faces and to dilute and render harmless respirable dust and harmful gases. The petitioner states that application of the standard would result in diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**5. Clinchfield Coal Company**

[Docket No. M-95-71-C]

Clinchfield Coal Company, 1600 Laidley Tower, P.O. Box 553, Charleston, West Virginia 25322 has filed a petition to modify the application of 30 CFR 75.340(a) (underground electrical installations) to its McClure No. 2 Mine (I.D. No. 44-04946) located in Dickenson County, Virginia. Due to extreme air restrictions on the intake airways, the petitioner proposes to install a low-level carbon monoxide monitoring system in all belt entries used as intake air courses as an early warning fire detection system to ventilate the active working faces and to dilute and render harmless respirable dust and harmful gases. The petitioner states that application of the standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**6. Costain Coal, Inc.**

[Docket No. M-95-72-C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1710-1 (canopies or cabs; self-

propelled electric face equipment; installation requirements) to its No. 9 Wheatcroft Mine (I.D. No. 15-13920) located in Webster County, Kentucky. The petitioner requests a modification of the mandatory standard to eliminate the use of a canopy or cab on its Pettito Mule longwall shield puller. The petitioner proposes to have its roof bolt spacing between the longwall shield canopy tip and the coal block reduced from 5 foot to 4 foot centers; to install additional roof bolts or cribs if adverse or questionable roof conditions occur; to install additional roof bolts or cribs if the longwall canopy tips are located more than 5 feet from the coal block; and to have a certified person continue to evaluate the roof conditions during longwall shield removal. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### 7. Consolidation Coal Company

[Docket No. M-95-73-C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.364(b) (weekly examination) to its Osage No. 3 Mine (I.D. No. 46-01455) located in Monongalia County, West Virginia. Due to deteriorating roof and rib conditions in the Main West return aircourse, between block markers 7 and 18, traveling the area would be unsafe. The petitioner proposes to establish evaluation check points to monitor the affected area; to have a certified person test for methane and the quantity of air at each check point on a weekly basis, and record the results in a record book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### 8. Industrial Coal Corporation

[Docket No. M-95-74-C]

Industrial Coal Corporation, P.O. Box 1139, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 77.214(a) (refuse piles; general) to its Mine No. 3 (I.D. No. 44-06673) located in Buchanan County, Virginia. The petitioner proposes to seal the mine by removing all sloughed overburden for 10 to 12 feet in front of and to either side of the drift openings in order to allow placement of suitable material for sealing. The petitioner proposes to install a rock core underdrain constructed of durable sandstone rock,

enclosed in filter fabric to prevent piping, and/or 2 to 3 inch CMP drain for wet seal in the lowest entry; to backfill the portal areas with an impervious, noncombustible material that contains enough fines to ensure an airtight seal and compacted to 90 percent Proctor dry density; to backfill to 4 feet above drift openings or to 4 feet above any visible cracks above the drifts; and to backfill all exposed coal seams in the vicinity of the openings to a minimum depth of 4 feet above the top of the seam. Petitioner states that all backfill material would be placed in 2-foot lifts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### 9. Trapper Mining, Inc.

[Docket No. M-95-75-C]

Trapper Mining, Inc., P.O. Box 187, Craig, Colorado 81626 has filed a petition to modify the application of 30 CFR 77.1304(a) (blasting agents; special provisions) to its Trapper Mine (I.D. No. 05-02838) located in Moffat County, Colorado. The petitioner requests that its previous petition be amended to allow the addition of petroleum-based solvent (NAPHTHA) to the recycled oil/diesel fuel mixture in the creation of an ammonium nitrate-fuel oil (ANFO) for use as a blasting agent at the minesite. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### 10. Twentymile Coal Company

[Docket No. M-95-76-C]

Twentymile Coal Company, 29515 Routt County Road #27, Oak Creek, Colorado 80467 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Foidel Creek Mine (I.D. No. 05-03836) located in Routt County, Colorado. The petitioner proposes to use high-voltage submersible pumps in boreholes drilled into a sump area or areas of the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### 11. Twentymile Coal Company

[Docket No. M-95-77-C]

Twentymile Coal Company, 29515 Routt County Road #27, Oak Creek, Colorado 80467 has filed a petition to modify the application of 30 CFR 75.803 (fail safe ground check circuits on high-voltage resistance grounded systems) to its Foidel Creek Mine (I.D. No. 05-03836) located in Routt County, Colorado. The petitioner proposes to use

high-voltage submersible pumps in boreholes drilled into a sump area or areas of the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### 12. Cyprus Bagdad Copper Corporation

[Docket No. M-95-08-M]

Cyprus Bagdad Copper Corporation, 9100 East Minerals Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 56.6309 (fuel oil requirements for ANFO) to its Bagdad Mine (I.D. No. 02-00137) located in Yavapai County, Arizona. The petitioner proposes to blend recycled oil with fuel oil in preparing ammonium nitrate-fuel oil (ANFO) for use as a blasting agent. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

#### Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 3, 1995. Copies of these petitions are available for inspection at that address.

Dated: May 25, 1995.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 95-13594 Filed 6-2-95; 8:45 am]

BILLING CODE 4510-43-P

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#### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

##### National Endowment For The Humanities

##### Agency Information Collection Under OMB Review

**AGENCY:** National Endowment for the Humanities, National Foundation on the Arts and Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposal for expedited action for a generic clearance for voluntary customer surveys. This collection of information falls under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted on or before June 19, 1995.

**ADDRESSES:** Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 310, Washington, DC 20506 (202-606-8494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503 (202-395-7316).

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 310, Washington, DC 20506 (202) 606-8494 from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

**Category: New Forms**

*Title:* Generic Clearance for Voluntary Customer Surveys.

*Form Number:* N/A.

*Frequency of Collection:* Annually.

*Respondents:* Grantees and Applicants.

*Use:* Assess Quality of Service.

*Estimated Number of Respondents:* 500.

*Frequency of Response:* Once.

*Estimated Hours for Respondents to Provide Information:* .50 per respondent.

*Estimated Total Annual Reporting and Recordkeeping Burden:* 250 hours.

**Sheldon Hackney,**

*Chairman.*

[FR Doc. 95-13704 Filed 6-2-95; 8:45 am]

BILLING CODE 7536-01-M

**Media Arts Advisory Panel: Film Preservation Section**

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the

Media Arts Advisory Panel (Film Preservation Section) to the National Council on the Arts will be held on June 21, 1995 from 10 a.m. to 3 p.m. This meeting will be held in Room 415, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 10 a.m. to 10:15 a.m. for introductory remarks and from 2:30 p.m. to 3:30 p.m. for a policy discussion.

The remaining portion of this meeting from 10:15 a.m. to 2:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the national Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: May 30, 1995.

**Yvonne M. Sabine,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 95-13651 Filed 6-2-95; 8:45 am]

BILLING CODE 7537-01-M

**Amended Notice of Meeting; Museum Advisory Panel, Agenda of Overview Panel Meeting: Correction**

May 30, 1995.

**ACTION:** Notice of correction of agenda to include a closed session.

**SUMMARY:** This notice corrects the scheduling of open sessions for the Museum Advisory Panel (Overview

Section) previously published in the Federal Register on May 25, 1995 (FR page 27796).

This panel, scheduled to meet in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington DC, will now include a closed session from 8:30 a.m. to 9:30 a.m. on June 14 for a brief application review. The remainder of the meeting from 9 a.m. to 6 p.m. on June 13 and from 9 a.m. to 3 p.m. will remain open as originally scheduled.

Dated: May 30, 1995.

**Yvonne M. Sabine,**

*Director, Office of Council & Panel Operations, National Endowment for the Arts.*

[FR Doc. 95-13648 Filed 6-2-95; 8:45 am]

BILLING CODE 7537-01-M

**Presenting Advisory Meeting: Dance on Tour Section**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Presenting Advisory Panel (Dance on Tour Section) to the National Council on the Arts will be held on June 26 and 28, 1995 from 3:30 p.m. to 5 p.m. on June 26 and from 9 a.m. to 5 p.m. on June 28. This meeting will be held in Room M-09, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 28 from 4:00 p.m. to 5:00 p.m. for a policy and guidelines review.

The remaining portions of this meeting from 3:30 p.m. to 5 p.m. on June 26 and from 9 a.m. to 4 p.m. on June 28 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies,

National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: May 26, 1995.

**Yvonne M. Sabine,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 95-13649 Filed 6-2-95; 8:45 am]

BILLING CODE 7537-01-M

**Visual Arts Advisory Panel Meeting: Works on Paper Fellowships Section**

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Works on Paper Fellowships Section) to the National Council on the Arts will be held on June 19-23, 1995 from 9 a.m. to 7 p.m. on June 19 to 22 and from 9:30 a.m. to 4:30 p.m. on June 23. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3:30 p.m. to 4:30 p.m. on June 23 for a policy and guidelines discussion.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on June 19-22 and from 9:30 a.m. to 3:30 p.m. on June 23 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100

Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: May 26, 1995.

**Yvonne M. Sabine,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 95-13650 Filed 6-2-95; 8:45 am]

BILLING CODE 7537-01-M

**NATIONAL INDIAN GAMING COMMISSION**

**Notice of Approval of Class III Tribal Gaming Ordinances**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

**FOR FURTHER INFORMATION CONTACT:** Christine Lambert at (202) 632-7003, or by facsimile at (202) 632-7066 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (the Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d)(2)(B) of the IGRA as implemented by 25 CFR 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. § 2710(d)(2)(B). Also, the Commission

will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to: National Indian Gaming Commission, 1850 M St., NW., Suite 250, Washington, DC 20036.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following Indian tribes:

Blue Lake Rancheria  
Cheyenne River Sioux Tribe  
Confederated Tribes of the Warm Springs Reservation  
Coquille Indian Tribe  
Coyote Valley Band of Pomo Indians  
Eastern Shawnee Tribe of Oklahoma  
Fallon Paiute-Shoshone Tribes  
Lake Miwok Indian Nation of the Middletown Rancheria  
Mille Lacs Band of Chippewa Indians  
Nez Perce Tribe  
Ponca Tribe of Oklahoma  
Port Gamble S'Klallam Tribe  
Pueblo of Isleta  
Quechan Indian Tribe  
Sac & Fox Tribe of Mississippi in Iowa  
Sisseton-Wahpeton Sioux Tribe  
St. Croix Chippewa Indians of Wisconsin  
Tulalip Tribes of Washington  
Tule River Tribe of the Tule River Indian Reservation  
Ute Mountain Ute Tribe.

**Harold A. Monteau,**

*Chairman.*

[FR Doc. 95-13605 Filed 6-2-95; 8:45 am]

BILLING CODE 7565-01-M

**NATIONAL LABOR RELATIONS BOARD**

**Revision of Statement of Organization and Functions**

**AGENCY:** National Labor Relations Board.

**ACTION:** Notice of Transferral of El Paso Resident Office from Region 28 to Region 16.

**SUMMARY:** The National Labor Relations Board gives notice of its intent to transfer its El Paso Resident Office and the three counties in the State of Texas which are serviced by that office, Culberson, El Paso and Hudspeth, from Region 28 to Region 16. This transfer is being effectuated to provide Region 16 with additional resources to deal with an increasing case intake and will enhance our overall administrative efficiency and the service we provide to the public. This transfer will result in having the entire State of Texas be under a single Region's jurisdiction and will be effective as of July 9, 1995. Parties are requested to continue to file all unfair labor practice charges and

representation petitions arising within the counties of Culberson, El Paso and Hudspeth, in the El Paso Resident Office.

Dated, Washington, DC, May 30, 1995.

By Direction of the Board.

**Joseph E. Moore,**

*Acting Executive Secretary.*

[FR Doc. 95-13646 Filed 6-2-95; 8:45 am]

BILLING CODE 7545-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-348 and 50-364]

### Joseph M. Farley Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF-2 and NPF-8. These licenses are issued to the Southern Nuclear Operating Company (SNC) and the Alabama Power Company for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2 (Farley), located in Houston County, Alabama.

#### Environmental Assessment

##### *Identification of Proposed Action*

The proposed action is in accordance with the SNC's application dated April 3, 1995, for exemption from certain requirements of 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage." The exemption would allow implementation of a hand geometry biometrics system to control site access at Farley so that photo identification badges for non-SNC employees that have been granted unescorted access into protected and vital areas may be taken offsite.

##### *The Need for the Proposed Action*

Pursuant to 10 CFR 73.55, paragraph (a), SNC shall establish and maintain an onsite physical protection system and security organization. Regulation 10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that the "licensee shall control all points of personnel and vehicle access into a protected area." Regulation 10 CFR 73.55(d)(5) specifies that, "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Regulation 10 CFR 73.55(d)(5) also states that an individual

not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area \* \* \*."

Currently, unescorted access into protected areas at the Farley plant is controlled through the use of a photograph on a badge/keycard (hereafter referred to as a "badge"), which is stored at the access point when not in use. The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both SNC employees and contractor personnel who have been granted unescorted access are given to the individuals at the entrance location upon entry and are returned upon exit. In accordance with 10 CFR 73.55(d)(5), the badges are not allowed to be taken offsite.

Southern Nuclear proposes to implement an alternate unescorted access control system that would eliminate the need to issue and retrieve badges at the entry point and would allow all individuals with unescorted access to keep their badges when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

##### *Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of SNC's application. Under the proposed system, each individual who is authorized unescorted access would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including SNC employees and contractors, would be allowed to keep their badge when departing the site.

Based on the Sandia report, "A Performance Evaluation of Biometric Identification Devices," SAND91-0276•UC-906, Unlimited Release, June 1991, that concluded hand geometry equipment possesses strong performance and high detection characteristics, and on its own experience with the current photo-

identification system, SNC determined that the proposed hand geometry system would provide the same level of assurance as the current system that access is only granted to authorized individuals. Since both the badge and hand geometry would be necessary for access into the protected areas, the proposed system would provide a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable unauthorized entry into protected areas. Southern Nuclear has stated it will implement a process for periodically testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan will be revised to include implementation and testing of the hand geometry access control system and to allow SNC employees and contractors to take their badges offsite.

Southern Nuclear has determined that the proposed hand geometry access control process for identifying personnel will provide the same high assurance objective regarding onsite physical protection as provided by the photo-identification process now in use.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected areas.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impacts. With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

##### *Alternative to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

##### *Alternative Use of Resources*

This action did not involve the use of any resources not previously considered in the Final Environmental Statement related to operation of the Joseph M.

Farley Nuclear Plant, Units 1 and 2, dated June 1972.

#### *Agencies and Persons Consulted*

In accordance with its stated policy on May 11, 1995, the staff consulted with the Alabama State official, James McNees of the Alabama Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

#### **Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated April 3, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC at the local public document room located at the Houston-Love Memorial Library, 212 W. Burnshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 30th day of May 1995.

For the Nuclear Regulatory Commission.

#### **Herbert N. Berkow,**

*Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 95-13632 Filed 6-2-95; 8:45 am]

BILLING CODE 7590-01-M

#### **Regulatory Guide; Issuance, Availability**

The Nuclear Regulatory Commission has issued for public comment a draft of a guide for its Regulatory Guide series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its Task Number, DG-0008 (which should be mentioned in all correspondence concerning this draft guide). DG-0008, "Applications for the Use of Sealed Sources in Portable Gauging Devices," is being developed to provide guidance to applicants and licensees in preparing applications for

new licenses, license amendments, and license renewals for the use of sealed sources in portable gauging devices.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on this draft guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments will be most helpful if received by August 31, 1995.

Comments may be submitted electronically, in either ASCII text or Wordperfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board 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.

If using a personal computer and modem, the NRC subsystem on FedWorld can be accessed directly by dialing the toll free number: 1-800-303-9672. 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 NUREGs and RegGuides for Comment subsystem can then be accessed by selecting the "Rules Menu" option from the "NRC Main Menu." For further information about options available for NRC at FedWorld, consult the "Help/Information Center" from the "NRC Main Menu." Users will find the "FedWorld Online User's Guides" particularly helpful. Many NRC subsystems and databases 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, 703-321-8020, or by using Telnet via Internet, fedworld.gov. If using 703-321-8020 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the "Regulatory, Government Administration and State System," 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 included. There is a 15-minute time limit for FTP access.

Although FedWorld 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-5780; e-mail AXD3@nrc.gov.

For more information on this Draft Regulatory Guide DG-0008, contact Ms. P.C. Vacca at the Office of the Nuclear Safety and Standards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7908; e-mail PCV@nrc.gov.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which maybe reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Distribution and Mail Service Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 16th day of May 1995.

For the Nuclear Regulatory Commission.

**Bill M. Morris,**

*Director, Division of Regulatory Applications,  
Office of Nuclear Regulatory Research.*

[FR Doc. 95-13633 Filed 6-2-95; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-458]

**Gulf States Utilities Company and  
Cajun Electric Power Cooperative, Inc.,  
River Bend Station, Unit 1,  
Reevaluation of Antitrust Finding**

Notice is hereby given that counsel for Cajun Electric Power Cooperative, Inc., and the Arkansas Cities of Benton, Conway, North Little Rock, Osceola, Prescott, and West Memphis as well as Farmer's Electric Cooperative Corporation have requested a reevaluation by the Director of the Office of Nuclear Reactor Regulation of the "Finding of No Significant Antitrust Changes" pursuant to the antitrust review of the captioned nuclear unit. After further review, I have decided not to change my finding.

A copy of my finding, the requests for reevaluation, and my reevaluation are available for public examination and copying, for a fee, at the Commission's Public Document Room, 2120 L Street, N.W., Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of May 1995.

For the Nuclear Regulatory Commission.

**William T. Russell,**

*Director, Office of Nuclear Reactor  
Regulation.*

[FR Doc. 95-13634 Filed 6-2-95; 8:45 am]

BILLING CODE 7590-01-M

**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

**Notice of Meeting of the Investment  
and Services Policy Advisory  
Committee**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice that the June 13, 1995 meeting of the Investment and Services Policy Advisory Committee will be held from 10:00 a.m. to 2:00 p.m. The meeting will be closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will be open to the public from 1:15 p.m. to 2:00 p.m.

**SUMMARY:** The Investment and Services Policy Advisory Committee will hold a meeting on June 13, 1995 from 10:00 a.m. to 2:00 p.m. The meeting will be

closed to the public from 10:00 a.m. to 1:15 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this portion of the meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 1:15 p.m. to 2:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

**DATES:** The meeting is scheduled for June 13, 1995, unless otherwise notified.

**ADDRESSES:** The meeting will be held at the Jefferson Hotel at 16th and M streets NW., Washington, DC, unless otherwise notified.

**FOR FURTHER INFORMATION CONTACT:** Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, (202) 395-6120.

**Michael Kantor,**

*United States Trade Representative.*

[FR Doc. 95-13609 Filed 6-2-95; 8:45 am]

BILLING CODE 3190-01-M

**RAILROAD RETIREMENT BOARD**

**Determination of Quarterly Rate of  
Excise Tax for Railroad Retirement  
Supplemental Annuity Program**

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1995, shall be at the rate of 33 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1995, 34.5 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be

credited to the Railroad Retirement Account and 65.5 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 26, 1995.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary of the Board.*

[FR Doc. 95-13568 Filed 6-2-95; 8:45 am]

BILLING CODE 7905-01-M

**SECURITIES AND EXCHANGE  
COMMISSION**

**Issuer Delisting; Notice of Application  
to Withdraw From Listing and  
Registration; (Pharma Patch, Plc,  
Class A, Class B, and Class C  
Warrants) File No. 1-12836**

May 30, 1995

Pharma Patch, Plc ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it desires to have the Securities delisted to avoid paying listing fees in that there has not been any trading whatsoever in the Warrants on the BSE since the Securities were listed in February 1994.

Any interested person may, on or before June 22, 1995 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 95-13596 Filed 6-2-95; 8:45 am]

BILLING CODE 8010-01-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Strafford County, New Hampshire

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in the Cities of Dover, Rochester, and Somersworth, in Strafford County, New Hampshire.

**FOR FURTHER INFORMATION CONTACT:** Mr. William F. O'Donnell, P.E., Environmental Program Manager, Federal Highway Administration, 279 Pleasant Street, Suite 204, Concord, New Hampshire 03301, Telephone: (603) 225-1608 or Mr. Dennis J. Danna, Chief, Technical Services Section, Bureau of Environment, New Hampshire Department of Transportation, P.O. Box 483, John O. Morton Building, Concord, New Hampshire 03302-0483, Telephone: (603) 271-3226.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the New Hampshire Department of Transportation (NHDOT), will prepare an EIS for a proposed highway project to improve access to and from the Spaulding Turnpike (NH Route 16) to the tri-city areas of Dover, Somersworth

and Rochester. The project shall study possible locations for a new interchange (Exit 10) and the necessary road networks to connect the new interchange to the highway system east and/or west of the turnpike.

Consideration of upgrading existing roadways within the study area, as alternative means of meeting the area's transportation requirements, will also be addressed. Other potential alternative solutions to be studied include: taking no action, applying transportation systems management (TSM) improvements to selected locations on existing roads, transportation demand management, including mass transit, and combinations of these alternatives. Various designs of grade, alignment, geometry and access will be evaluated.

An Advisory Task Force consisting of the Seacoast Metropolitan Planning Organization, public transit operators, Federal Transit Administration, local officials, NHDOT and FHWA will be established to explore and evaluate transportation alternatives and to evaluate project input as this study progresses.

Letters describing the proposed action and soliciting scoping comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have an interest in this proposal. They will also be invited to a formal scoping meeting. Public information, community and Advisory Task Force meetings will be held in the study area as the project progresses to consider public input in the planning process. A public hearing will be held following distribution of the Draft Environmental Impact Statement (DEIS). Public notice will be given regarding the time and location of this hearing. The DEIS will be available for review and comment by the public and interested agencies.

The formal scoping meeting will be held at MHDOT offices in Concord, New Hampshire on June 29, 1995 at 9:30 a.m. to: (1) confirm the limits of the project study area, (2) help to establish the study framework and the impacts to be analyzed, and (3) help to define a reasonable range of alternatives to be considered. Study area resources to be analyzed include the natural environment (such as farmland, wetlands, floodplains, and water resources), the social environment (such as land use, economic development and community facilities), the cultural environment (historic and archeological resources) and the transportation network. Agencies to be invited to be cooperating agencies are the U.S. Environment Protection Agency (EPA), the U.S. Army Corps of Engineers (ACOE), the New Hampshire State Historic Preservation Office (SHPO) and the New Hampshire Wetlands Board (NHWB).

Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified. Comments or questions concerning this proposed action should be directed to the FHWA or the NHDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on May 24, 1995.

**Kathleen O. Laffey,**

*Division Administration, Concord, New Hampshire.*

[FR Doc. 95-13569 Filed 6-2-95; 8:45 am]

BILLING CODE 4910-22-M

# Sunshine Act Meetings

Federal Register

Vol. 60, No. 107

Monday, June 5, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Tuesday, May 30, 1995.

**LOCATION:** Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

### MATTER TO BE CONSIDERED:

*Enforcement Matter OS# 5010*

The Commission was briefed on issues related to enforcement matter OS# 5010.

For a recorded message containing the latest agenda information, call (301) 504-0709.

### CONTACT PERSON FOR ADDITIONAL

**INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504-0800.

Dated: May 31, 1995.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 95-13810 Filed 6-1-95; 3:13 pm]

**BILLING CODE 6355-01-M**

## U.S. CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Thursday, June 8, 1995.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

### MATTER TO BE CONSIDERED:

*Protocol Revisions*

The staff will brief the Commission on two new issues raised on a final rule revising the

child-resistant packaging test protocols under the Poison Prevention Packaging Act. This matter arises from the Commission's decision on February 9, 1995, to reopen the proceeding and to accept oral and written comments on the newly-raised issues.

For a recorded message containing the latest agenda information, call (301) 504-0709.

### CONTACT PERSON FOR ADDITIONAL

**INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: May 31, 1995.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 95-13811 Filed 6-1-95; 3:13 pm]

**BILLING CODE 6355-01-M**

## FEDERAL MARITIME COMMISSION

**TIME AND DATE:** 10:00 a.m., June 7, 1995.

**PLACE:** Main Hearing Room—800 North Capitol Street, NW., Washington, DC 20573-0001.

**STATUS:** Open.

**MATTER(S) TO BE CONSIDERED:** Docket No. 94-07—*Financial Reporting Requirements and Rate of Return Methodology in the Domestic Offshore Trades*—Consideration of Comments.

### CONTACT PERSON FOR MORE INFORMATION:

Joseph C. Polking, Secretary, (202) 523-5725.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 95-13748 Filed 6-1-95; 9:15 am]

**BILLING CODE 6730-01-M**

## SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission

will hold the following meeting during the week of June 5, 1995.

A closed meeting will be held on Wednesday, June 7, 1995, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, June 7, 1995, at 10:00 a.m., will be:

- Institution of injunctive actions.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of injunctive action.
- Settlement of administrative proceedings of an enforcement nature.
- Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942-7070.

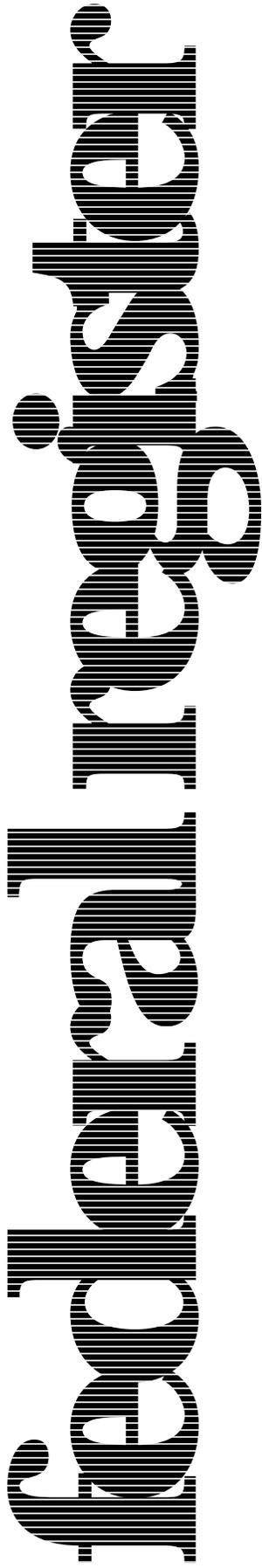
Dated: May 31, 1995.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 95-13803 Filed 6-1-95; 3:13 pm]

**BILLING CODE 8010-01-M**



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Monday  
June 5, 1995

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**Part II**

**Department of  
Agriculture**

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**Agricultural Marketing Service**

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**7 CFR Part 945**

**Irish Potatoes Grown in Oregon and  
Idaho; Final Rule**

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 945

[Docket No. A0-150-A6; FV92-945-2FR]

**Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Order Further Amending Marketing Order**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule further amends the marketing agreement and order for potatoes grown in Idaho-Eastern Oregon (order). The amendments include authority to: regulate shipments of potatoes within the production area, change representation and quorum procedures of the committee, set container marking and labeling requirements, and require the committee to consider, at least every six years, changes in committee size or reapportionment of committee membership. Also, they change committee fiscal operations, add confidentiality and verification provisions to the order, and make other miscellaneous changes that are consistent with the amendments. These changes were favored by the subject potato producers in a referendum held from April 3-17, 1995. The amendments will improve the administration, operation and functioning of the marketing order program.

EFFECTIVE DATE: May 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Gary Olson, OIC, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: 503-326-2725, or Fax 503-326-7440; or Valerie L. Emmer or Jim Wendland, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, D.C. 20090-6456, telephone: 202-205-2829 or 720-2170 respectively, or FAX 202-720-5698.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on August 3, 1993, and published in the **Federal Register** on August 11, 1993 (58 FR 42696). Recommended Decision and Opportunity to File Written Exceptions issued on November 23, 1994, and published in the **Federal Register** on November 30, 1994 (59 FR 61286). Secretary's Decision and Referendum

Order issued March 3, 1995, and published in the **Federal Register** on March 10, 1995 (60 FR 13080).

**Preliminary Statement**

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

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

The final rule was formulated on the record of a public hearing held in Idaho Falls, Idaho, on September 8, 1993, to consider the proposed amendment of the Marketing Agreement and Order No. 945, regulating the handling of potatoes grown in designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to collectively as the "order." Notice of the hearing was published in the August 11, 1993, issue of the **Federal Register** (58 FR 42696).

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Idaho-Eastern Oregon Potato Committee (committee) established under the order to assist in local administration of the program.

The proposals pertained to: (1) Redefining "ship or handle" to include

shipments of potatoes within the production area; (2) providing seed producers with representation on the committee and adding authority for the committee to recommend to the Secretary changes in the committee size and composition; (3) updating committee representation districts to show the counties currently in each district; (4) requiring the committee to consider, at least every six years, whether to recommend changes in committee size or reapportionment of committee membership; (5) changing committee quorum procedures; (6) removing an outdated assessment limitation of \$1 per carload and allowing the committee to impose late payment or interest fees, or both, on late assessment payments, accept advance payments, and borrow monies in an extreme emergency for program administration; (7) adding authority for the committee to recommend container marking and labeling requirements; and (8) specifying confidentiality requirements for handler reports submitted to the committee. The Department of Agriculture proposed authority for adding requirements regarding verification of reports and to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Acting Assistant Secretary, Marketing and Regulatory Programs, on March 2, 1995, filed with the Hearing Clerk, U.S. Department of Agriculture, a Secretary's Decision and Referendum Order, directing that a referendum be conducted during the period April 3-17, 1995, among producers of Idaho-Eastern Oregon Potatoes to determine whether they favored the proposed amendments to the order. In the referendum, all amendment proposals were favored by more than two-thirds of the producers voting in the referendum. Accordingly, all proposed amendments are included in this order further amending the order.

The amended marketing agreement was subsequently mailed to all potato handlers in the production area for their approval. The marketing agreement was signed by potato handlers representing more than 50 percent of the volume of potatoes handled by all handlers during the representative period of August 1, 1993, to July 31, 1994.

**Small Business Considerations**

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$5,000,000. Small agricultural producers are defined as those having annual receipts of less than \$500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

During the 1992-93 crop year, 66 handlers were regulated under Marketing Order No. 945. In addition, there are about 1,600 producers of potatoes in the production area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the potato marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. Marketing orders and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

This final rule amends certain provisions of the order including:

§ 945.20 Establishment and membership pertaining to operations of the committee, including providing seed producers representation on the committee; § 945.23 Redistricting and reapportionment authorizing changes in committee size, composition, and representation; § 945.30 Procedure regarding quorum requirements; and § 945.42 Assessments removing a \$1 per carload maximum assessment rate and allowing the committee to impose late payment and interest fees on late assessment payments and borrow monies in an extreme emergency for program administration. The record indicates these changes will provide an opportunity for a broader based representation on the committee and more flexibility to adjust to future changes in industry structure, potato production and financial operations. These changes are also designed to enhance the administration and

functioning of the order and will have negligible, if any, economic impact on small businesses.

This final rule amends § 945.9 Ship or handle by revising the definition of these terms to include the handling of potatoes in the current of commerce within the counties covered by the order's production area, broadening the scope of the order. This will require all regulated shipments of potatoes for fresh market to be inspected and meet order requirements, including grade, size, quality, pack, and payment of assessments. This final rule will improve the market for potatoes handled within the production area. This will benefit both producers and handlers because minimum grade, size and quality requirements established under the order are important to the industry in fostering consumer satisfaction, increasing the demand for Idaho-Eastern Oregon potatoes, and improving industry returns; and the additional assessment income would improve the financial operations of the order. Any added burden on small businesses should be outweighed by the added benefits accruing to them.

The change to allow the rate of assessment to be based on a hundredweight of potatoes rather than an outdated maximum amount of \$1 per railroad carload will improve the financial operations of the order and not adversely impact small businesses. This change will provide more efficient funding of order operations and activities. Fresh potato shipments have stabilized in recent years and the current maximum rate specified will likely not be sufficient to properly fund committee operating costs beyond the next few years if costs continue to rise.

Another change will amend § 945.52 Issuance of regulations to add authority to require accurate and uniform marking and labeling of the containers in which production area potatoes are shipped. The benefits of the expected higher returns that could result from increases in buyer and consumer satisfaction due to accurate marking and labeling should outweigh any potential burden on small businesses.

Another amendment, to § 945.80 Reports, will provide confidentiality requirements for reports submitted to the committee. This will safeguard handlers' proprietary information, including that for small businesses, without imposing any burden on them. Additionally, new § 945.80 provisions will add authority for the Secretary and the committee to verify the correctness of reports filed by handlers, and to verify handler compliance with recordkeeping requirements. The

requirement will not have a significant impact on small entities in the industry.

The final rule to make other miscellaneous changes that will be consistent with the changed amendments is necessary so that all sections of the order will be consistent. These changes include deleting and redesignating certain sections of the order.

All these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the revisions of the order will not have a significant economic impact on handlers or producers.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any reporting and recordkeeping requirements that may result from these amendments will be submitted to OMB for approval.

#### List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

*Order Further Amending the Order Regulating the Handling of Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon*

#### Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the amendments to the Marketing Agreement and Order No. 945 (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon.

*Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:*

(1) The order, as amended, as hereby further amended, and all of the terms

and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, as hereby further amended, regulates the handling of Irish potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as amended, as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of potatoes grown in the production area; and

(5) All handling of potatoes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make these order amendments effective not later than May 31, 1995.

A later effective date would unnecessarily delay the implementation of the order amendments and the improvement in operation of the marketing order program. The committee, producers and handlers need as much time as possible to make plans to implement the amended order and discuss needed changes to its handling regulation and committee operating procedures before its June 6, 1995, annual organizational meeting, when it recommends actions for the fast approaching 1995-96 season. The harvesting and marketing of the 1995 crop is expected to begin in August 1995. Hence, Department and industry implementation activities must begin promptly. Some of the committee recommendations for the 1995-96 season will require informal rulemaking by the Department to be implemented.

In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective May 31, 1995, and that it would be contrary to the public interest to delay the effective date of these order amendments for 30 days after its publication in the **Federal**

**Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping potatoes covered by the said order, as amended, as hereby further amended) who, during the period August 1, 1993, through July 31, 1994, handled 50 percent or more of the volume of such potatoes covered by the said order, as amended, as hereby further amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period August 1, 1993, through July 31, 1994 (which has been deemed to be a representative period), have been engaged within the Idaho-Eastern Oregon Potato production area in the production of such potatoes for fresh market.

#### *Order Relative to Handling*

*It is therefore ordered,* That on and after the effective date hereof, all handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby further amended as follows:

The provisions of the proposed marketing order amendments further amending the order contained in the Recommended Decision issued by the Administrator on November 23, 1994, and published in the **Federal Register** on November 30, 1994 (59 FR 61286), and in the Secretary's Decision issued on March 2, 1995, and published in the **Federal Register** on March 10, 1995 (60 FR 13080), shall be and are the terms and provisions of this order further amending the order, and are set forth in full herein.

#### **PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON**

1. The authority citation for 7 CFR part 945 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Section 945.9 is revised as follows:

#### **§ 945.9 Ship or handle.**

*Ship or handle* means to pack, sell, consign, transport or in any other way to place potatoes grown in the

production area, or cause such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof, so as to directly burden, obstruct, or affect any such commerce: *Provided*, That the definition of *ship or handle* shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes stored or prepared for market, except that the committee may impose safeguards pursuant to § 945.53 with respect to such potatoes.

3. Section 945.20 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

#### **§ 945.20 Establishment and membership.**

(a) The Idaho-Eastern Oregon Potato Committee is hereby established consisting of eight members, of whom four shall currently be producers of potatoes for the fresh market who produced such potatoes during at least three of the last five years; at least one member shall be a producer predominately of potatoes for seed during a similar period; and three shall be handlers. For each member of the committee, there shall be an alternate who shall have the same qualifications as the member. The number of producer and/or handler members and alternates on the committee may be increased and the composition of the committee between producers and handlers may be changed as provided in § 945.23.

\* \* \* \* \*

(d) At least every six years, the committee shall review committee size, composition, and representation and recommend to the Secretary whether changes should be made, as provided in § 945.23.

4. Sections 945.22 through 945.24 are revised to read as follows:

#### **§ 945.22 Districts.**

For the purpose of selecting committee members and alternate members, the following districts of the production area are hereby established: *Provided*, That these districts may be changed as provided in § 945.23.

(a) *District No. 1:* The counties of Bonneville, Butte, Clark, Fremont, Jefferson, Madison, and Teton;

(b) *District No. 2:* The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power; and

(c) *District No. 3:* Malheur County, Oregon, and the remaining designated counties in Idaho included in the production area, and not included in District No. 1 or District No. 2.

**§ 945.23 Redistricting and reapportionment.**

(a) The Secretary, upon recommendation of the committee, may reestablish districts within the production area, may reapportion committee membership among the various districts, may increase the number of producer and/or handler members and alternates on the committee, and may change the composition of the committee by changing the ratio between producer and handler members, including their alternates. At least every six years, the committee shall review committee size, composition and representation and recommend to the Secretary whether changes should be made. In recommending any such changes, the committee shall give consideration to:

- (1) Shifts in potato acreage within districts and within the production area during recent years;
- (2) the importance of new potato production in its relation to existing districts;
- (3) the equitable relationship between committee membership and districts;
- (4) economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and
- (5) other relevant factors.

(b) Membership of the committee shall be apportioned among the districts of the production area so as to provide the following representation or such other representation as recommended by the committee and approved by the Secretary:

- (1) Three producer members, including at least one who predominately produces seed potatoes, and one handler member, with their respective alternates, from District No. 1;
- (2) One producer member and one handler member, with their respective alternates, from District No. 2; and
- (3) One producer member and one handler member, with their respective alternates, from District No. 3.

**§ 945.24 Selection.**

Members and alternates of the committee shall be selected by the Secretary on the basis specified in § 945.23 (b) from nominations made pursuant to § 945.25 or from other eligible persons.

5. In § 945.30, paragraph (a) is revised to read as follows:

**§ 945.30 Procedure.**

(a) A simple majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum or to pass any motion or approve any committee action, except any motion regarding a change in committee size shall require a unanimous vote. At any assembled meeting, all votes shall be cast in person.

\* \* \* \* \*

6. In § 945.42, paragraph (b) is revised and new paragraphs (d) and (e) are added to read as follows:

**§ 945.42 Assessments.**

\* \* \* \* \*

(b) Assessments shall be levied upon handlers at a rate per hundredweight of potatoes or equivalent established by the Secretary. Such rate may be established upon the basis of the committee's budget recommendations, and other available information.

\* \* \* \* \*

(d) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay, on or before the due date established by the Secretary, the total assessment for which such handler is liable. Such due date and the late payment fee and interest rate shall be recommended by the committee and approved by the Secretary.

(e) In order to provide funds to carry out its function, after the effective date of this subpart the committee may accept advance assessments from handlers. Advance assessments received from a handler shall be credited toward assessments levied against that handler during that fiscal period. In the case of an extreme emergency, the committee may also borrow money on a short term basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all borrowed money by the end of the next fiscal period from assessment income.

7. In § 945.52, paragraph (a)(3) is revised to read as follows:

**§ 945.52 Issuance of regulations.**

(a) \* \* \*

(3) Fix the size, capacity, weight, dimensions, pack, labeling or marking of the container, or containers, which may be used in the packaging or handling of potatoes, or both; or

\* \* \* \* \*

8. Section 945.80 is amended by designating the existing undesignated text as paragraph (a) and adding new paragraphs (b) through (d) to read as follows:

**§ 945.80 Reports.**

\* \* \* \* \*

(b) All data or other information constituting a trade secret, or disclosing a trade position or business condition of a particular handler shall be treated as confidential and shall at all times be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

(c) Each handler shall maintain for at least two succeeding fiscal periods such records of potatoes received and of potatoes disposed of by such handler as may be necessary to verify reports required pursuant to this section. The committee, with the approval of the Secretary, may prescribe rules and regulations issued pursuant to this section specifying handler records and reports which the committee may need to perform its functions.

(d) For the purpose of assuring compliance and checking and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where potatoes are held, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

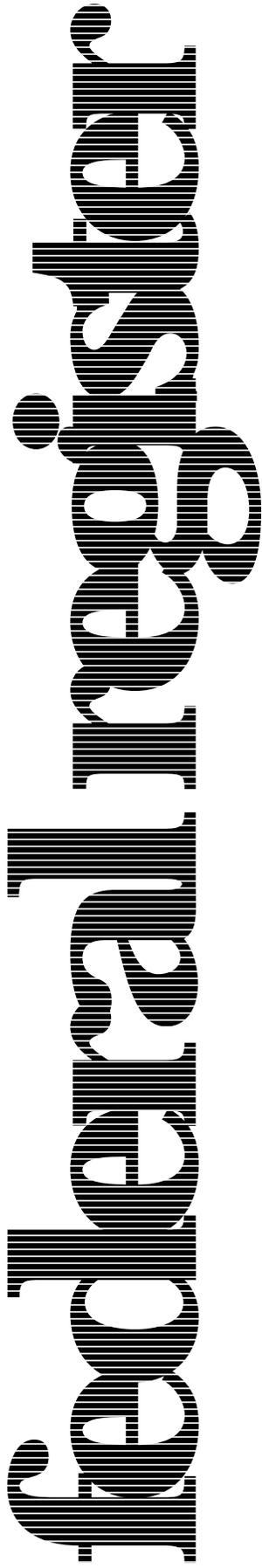
Dated: May 31, 1995.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Regulatory Programs.*

[FR Doc. 95-13687 Filed 6-2-95; 8:45 am]

BILLING CODE 3410-02-P



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Monday  
June 5, 1995

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**Part III**

**Department of  
Education**

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**Grants and Cooperative Agreements,  
Availability, etc.; Tribal Division of  
Education School Reform Program;  
Notice**

**DEPARTMENT OF EDUCATION**

[CFDA No.: 84.311]

**Tribal Division of Education School Reform Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995**

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application requirements, and instructions needed to apply for a grant under this competition.

*Purpose of Program:* To assist tribal divisions of education in coordinating school reform plans developed for schools funded by the Bureau of Indian Affairs (BIA) and those plans developed for public schools.

*Eligible Applicants:* Tribal divisions of education of federally recognized tribes whose students attend BIA-funded and public schools.

*Deadline for Transmittal of Applications:* July 20, 1995.

*Available Funds:* \$500,000.

*Estimated Range of Awards:* \$50,000 to \$75,000.

*Estimated Average Size of Awards:* \$62,500.

*Estimated Number of Awards:* 8.

**Note:** These estimates are projections for the guidance of potential applicants. The Department of Education is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) as follows:

- (1) 34 CFR Part 75 (Direct Grant Programs).
- (2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).
- (3) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
- (4) 34 CFR Part 81 (General Education Provisions Act—Enforcement).
- (5) 34 CFR Part 82 (New Restrictions on Lobbying).
- (6) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
- (7) 34 CFR Part 86 (Drug-Free Schools and Campuses).

**SUPPLEMENTARY INFORMATION:** The Goals 2000: Educate America Act (Pub. L. 103-227) (20 U.S.C. 5801 *et seq.*) (the Act) promotes systemic education reform through the development and

implementation of comprehensive improvement plans based on challenging academic standards and high expectations for all students. One of the basic premises of Goals 2000 is that reform should be promoted from the bottom up in communities, local educational agencies (LEAs), and schools, and guided by the coordination and facilitation of State and local leaders. Consistent with the concept of bottom-up reform, a State educational agency (SEA) awards most of the funds that it receives under title III of the Act to LEAs for local reform initiatives, preservice teacher education, and professional development activities. Only a small portion of the funding is retained by the SEA for the development and implementation of the State improvement plan. Likewise, an LEA awards most of its local reform funds to individual public schools to develop and implement comprehensive school improvement plans that are designed to help all students meet challenging State content and student performance standards.

Title III also reserves for the Secretary of the Interior funds for, among other things, the development of a system-wide reform plan that provides for the fundamental restructuring and improvement of elementary and secondary education in schools funded by the BIA. Similar to SEA grants, the funds to BIA also support the development and implementation of comprehensive school improvement plans—in this case, reform plans for BIA-funded schools (i.e., schools that receive funding from the BIA and are operated either by BIA or a tribe).

Recognizing the importance of coordinating the various school reform initiatives affecting Indian children, Congress has authorized under section 314(a)(4) of the Act grants to tribal divisions of education for coordination efforts between school reform plans developed for public schools and plans developed for BIA-funded schools. The coordination efforts, which include tribal activities in support of the plans, are essential because Indian children from the same tribe are often served by a patchwork of schools from different jurisdictions throughout their elementary and secondary education. In many instances, there is little consistency in educational policy, standards, and curriculum among the various public and BIA-funded schools. Furthermore, the high transfer rates of Indian students among schools and, in some areas, the large number of Indian students in public schools underscore the necessity for improved coordination activities.

Because a recipient tribal division of education under this program would help coordinate the reform efforts of BIA-funded and public schools, eligible applicants are limited to tribal divisions of education of federally recognized tribes. A federally recognized tribe is any Indian tribe, band, Nation, or other organized group or community that is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A “tribal division of education” would include a department, agency, board, committee, or other institution within the tribe whose primary responsibility is planning, developing, and coordinating existing elementary and secondary education programs for the children of the tribe.

Many school reform plans are being developed and implemented with funds from sources other than Goals 2000. A tribal division of education is eligible to apply for a grant under section 314(a)(4) regardless of whether the relevant schools are receiving Goals 2000 funds to support reform initiatives or are even located in a State that is participating in the Goals 2000 Title III grant program. However, in order for a tribal division of education to be eligible for a grant, the public and BIA-funded schools that the children of the tribe attend must be implementing (or in the process of developing and implementing) comprehensive school reform plans that are designed to meet the needs of their particular student population and help all students meet challenging academic standards.

A tribal division of education receiving a grant under section 314(a)(4) will be given maximum flexibility to implement a program that fits the unique circumstances of the children in the tribe. The grants will assist tribal divisions of education in building partnerships between public and BIA-funded schools, and could be used to support many types of coordination efforts, including activities such as improving consistency and compatibility of curricula among public and BIA-funded schools, assisting in the development of curricula that are culturally sensitive, creating mechanisms to increase communication among parents and the schools that their children attend, increasing tribal participation in the development and implementation of school improvement plans, and conducting professional development programs for local teachers.

The Secretary strongly encourages an applicant to propose coordination

efforts that include broad-based outreach and collaborative processes involving parents, teachers, school administrators, and business and tribal leaders, as appropriate. A meritorious proposal would also demonstrate that the relevant public and BIA-funded schools are committed to cooperate with and assist the applicant in its activities.

In demonstrating that there is a specific need for improved coordination efforts between the school reform plans for the BIA-funded schools and the plans for the public schools attended by the children of the tribe, the Secretary encourages applicants to consider factors such as—

(a) The rate of mobility of students between or among public and BIA-funded schools;

(b) The lack of an effective system for tracking the transfer of students between or among public and BIA-funded schools;

(c) The lack of consistency and compatibility in curriculum among public and BIA-funded schools;

(d) Social and academic adjustment problems of students transferring from one school to another;

(e) The number of children from the tribe attending public schools; and

(f) Insufficient ongoing coordination efforts between and among public and BIA-funded schools in the development or implementation of their school reform plans.

#### Selection Criteria

The Secretary will use the selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The Secretary assigns the 15 points that are reserved in 34 CFR 75.210(c) as follows: 10 additional points to selection criterion (3)—Plan of operation—for a total of 25 points for that criterion; 3 additional points to selection criterion (4)—Quality of key personnel—for a total of 10 points for that criterion; and 2 additional points to criterion (6)—evaluation plan—for a total of 7 points for that criterion.

The maximum score for all of the criteria totals 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion. The criteria are as follows:

(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the authorizing statute (i.e., sections 2 and 314(a)(4) of the Goals 2000: Educate America Act), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

**Note:** Section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) requires that, to the greatest extent feasible, a grantee under this program (1) give to Indians preferences and opportunities for training and employment in connection with the administration of the grant, and (2) give to Indian organizations and to Indian-owned economic enterprises preference in the award of contracts in

connection with the administration of the grant.

(ii) To determine personnel qualifications under paragraphs (4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (7 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points)

The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

#### Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.311), Washington, D.C. 20202-4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA#84.311), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708-9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

#### **Application Instructions and Forms**

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

#### **Additional Materials**

Estimated Public Reporting Burden. Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013). Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80-0014, 9/90) and instructions.

**Note:** ED 80-0014 is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

#### **FOR FURTHER INFORMATION CONTACT:**

Sandra L. Spaulding, U.S. Department of Education, 600 Independence Avenue SW., Portals Building, Room 4300, Washington, D.C. 20202-2110, Telephone: (202) 260-1441. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Program Authority:** Section 314(a)(4) of the Goals 2000: Educate America Act, 20 USC 5894(a)(4).

Dated: May 30, 1995.

**Thomas W. Payzant,**  
*Assistant Secretary, Elementary and Secondary Education.*

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

<b>1. TYPE OF SUBMISSION:</b> <i>Application</i> <input type="checkbox"/> Construction <input checked="" type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>		Applicant Identifier
		<b>3. DATE RECEIVED BY STATE</b>		State Application Identifier
<b>Preapplication</b> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>		Federal Identifier
<b>5. APPLICANT INFORMATION</b>				
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)	
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> [ ] [ ] - [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]			<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/>	
<b>8. TYPE OF APPLICATION:</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award    B. Decrease Award    C. Increase Duration D. Decrease Duration    Other (specify): _____			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): _____	
<b>9. NAME OF FEDERAL AGENCY:</b> U.S. Department of Education				
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b>		8 4 . 3 1 1A		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>
TITLE: Tribal Division of Education School Reform Program				
<b>12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):</b>				
<b>13. PROPOSED PROJECT:</b>		<b>14. CONGRESSIONAL DISTRICTS OF:</b>		
Start Date	Ending Date	a. Applicant		b. Project
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>		
a. Federal	\$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____		
b. Applicant	\$ .00	b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		
c. State	\$ .00			
d. Local	\$ .00			
e. Other	\$ .00			
f. Program Income	\$ .00	<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b>		
g. TOTAL	\$ .00	<input type="checkbox"/> Yes    If "Yes," attach an explanation. <input type="checkbox"/> No		
<b>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</b>				
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

## 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: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).  | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 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 <i>only</i> 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. |
| 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.   | 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.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 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.  |
| 7.    | Enter the appropriate letter in the space provided.  | 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.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "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.  |       |  |

 <p><b>U.S. DEPARTMENT OF EDUCATION</b></p> <p><b>BUDGET INFORMATION</b></p> <p><b>NON-CONSTRUCTION PROGRAMS</b></p>		<p>OMB Control No. 1875-0102</p> <p>Expiration Date: 9/30/95</p>				
<p>Name of Institution/Organization</p>		<p>Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.</p>				
<p><b>SECTION A - BUDGET SUMMARY</b></p> <p><b>U.S. DEPARTMENT OF EDUCATION FUNDS</b></p>						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization		SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS					Total (f)
Budget Categories		Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	
1. Personnel							
2. Fringe Benefits							
3. Travel							
4. Equipment							
5. Supplies							
6. Contractual							
7. Construction							
8. Other							
9. Total Direct Costs (lines 1-8)							
10. Indirect Costs							
11. Training Stipends							
12. Total Costs (lines 9-11)							

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION C - OTHER BUDGET INFORMATION (see instructions)

## INSTRUCTIONS FOR ED FORM NO. 524

### General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

### Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):

For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):

Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):

Show the total budget request for each project year for which funding is requested.

Line 12, column (f):

Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

**Instructions for ED Form 524 (cont.)****Section B - Budget Summary**  
**Non-Federal Funds**

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

**Lines 1-11, columns (a)-(e):**

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

**Lines 1-11, column (f):**

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

**Line 12, columns (a)-(e):**

Show the total matching or other contribution for each project year.

**Line 12, column (f):**

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

**Section C - Other Budget Information**

**Pay attention to applicable program specific instructions, if attached.**

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

**Instructions for Part III Application Narrative**

Before preparing the Application Narrative an applicant should read carefully the information in this notice, including the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

**Instructions for Estimated Public Reporting Burden**

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 40 hours per response,

including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1810-0573, Washington, D.C. 20503.

(Information collection approved under OMB control number 1810-0573. Expiration date: 4/30/98.)

BILLING CODE 4000-01-P

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

**As the duly authorized representative of the applicant I certify that the applicant:**

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

#### A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing an on-going drug-free awareness program to inform employees about--
  - (1) The dangers of drug abuse in the workplace;
  - (2) The grantee's policy of maintaining a drug-free workplace;
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--
  - (1) Abide by the terms of the statement; and
  - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check  if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE  
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

Approved by OMB  
0348-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

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Monday, June 5, 1995

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1911-1925 .....	(869-022-00113-2) .....	26.00	July 1, 1994	101 .....	(869-022-00157-4) .....	29.00	July 1, 1994
1926 .....	(869-022-00114-1) .....	33.00	July 1, 1994	102-200 .....	(869-022-00158-2) .....	15.00	July 1, 1994
1927-End .....	(869-022-00115-9) .....	36.00	July 1, 1994	201-End .....	(869-022-00159-1) .....	13.00	July 1, 1994
<b>30 Parts:</b>				<b>42 Parts:</b>			
1-199 .....	(869-022-00116-7) .....	27.00	July 1, 1994	1-399 .....	(869-022-00160-4) .....	24.00	Oct. 1, 1994
200-699 .....	(869-022-00117-5) .....	19.00	July 1, 1994	400-429 .....	(869-022-00161-2) .....	26.00	Oct. 1, 1994
700-End .....	(869-022-00118-3) .....	27.00	July 1, 1994	430-End .....	(869-022-00162-1) .....	36.00	Oct. 1, 1994
<b>31 Parts:</b>				<b>43 Parts:</b>			
0-199 .....	(869-022-00119-1) .....	18.00	July 1, 1994	1-999 .....	(869-022-00163-9) .....	23.00	Oct. 1, 1994
200-End .....	(869-022-00120-5) .....	30.00	July 1, 1994	1000-3999 .....	(869-022-00164-7) .....	31.00	Oct. 1, 1994
<b>32 Parts:</b>				4000-End .....	(869-022-00165-5) .....	14.00	Oct. 1, 1994
1-39, Vol. I .....		15.00	<sup>2</sup> July 1, 1984	<b>44</b> .....	(869-022-00166-3) .....	27.00	Oct. 1, 1994
1-39, Vol. II .....		19.00	<sup>2</sup> July 1, 1984	<b>45 Parts:</b>			
1-39, Vol. III .....		18.00	<sup>2</sup> July 1, 1984	1-199 .....	(869-022-00167-1) .....	22.00	Oct. 1, 1994
1-190 .....	(869-022-00121-3) .....	31.00	July 1, 1994	200-499 .....	(869-022-00168-0) .....	15.00	Oct. 1, 1994
191-399 .....	(869-022-00122-1) .....	36.00	July 1, 1994	500-1199 .....	(869-022-00169-8) .....	32.00	Oct. 1, 1994
400-629 .....	(869-022-00123-0) .....	26.00	July 1, 1994	1200-End .....	(869-022-00170-1) .....	26.00	Oct. 1, 1994
630-699 .....	(869-022-00124-8) .....	14.00	<sup>5</sup> July 1, 1991	<b>46 Parts:</b>			
700-799 .....	(869-022-00125-6) .....	21.00	July 1, 1994	1-40 .....	(869-022-00171-0) .....	20.00	Oct. 1, 1994
800-End .....	(869-022-00126-4) .....	22.00	July 1, 1994	41-69 .....	(869-022-00172-8) .....	16.00	Oct. 1, 1994
<b>33 Parts:</b>				70-89 .....	(869-022-00173-6) .....	8.50	Oct. 1, 1994
1-124 .....	(869-022-00127-2) .....	20.00	July 1, 1994	90-139 .....	(869-022-00174-4) .....	15.00	Oct. 1, 1994
125-199 .....	(869-022-00128-1) .....	26.00	July 1, 1994	140-155 .....	(869-022-00175-2) .....	12.00	Oct. 1, 1994
200-End .....	(869-022-00129-9) .....	24.00	July 1, 1994	156-165 .....	(869-022-00176-1) .....	17.00	<sup>7</sup> Oct. 1, 1993
<b>34 Parts:</b>				166-199 .....	(869-022-00177-9) .....	17.00	Oct. 1, 1994
1-299 .....	(869-022-00130-2) .....	28.00	July 1, 1994	200-499 .....	(869-022-00178-7) .....	21.00	Oct. 1, 1994
300-399 .....	(869-022-00131-1) .....	21.00	July 1, 1994	500-End .....	(869-022-00179-5) .....	15.00	Oct. 1, 1994
400-End .....	(869-022-00132-9) .....	40.00	July 1, 1994	<b>47 Parts:</b>			
<b>35</b> .....	(869-022-00133-7) .....	12.00	July 1, 1994	0-19 .....	(869-022-00180-9) .....	25.00	Oct. 1, 1994
<b>36 Parts:</b>				20-39 .....	(869-022-00181-7) .....	20.00	Oct. 1, 1994
1-199 .....	(869-022-00134-5) .....	15.00	July 1, 1994	40-69 .....	(869-022-00182-5) .....	14.00	Oct. 1, 1994
200-End .....	(869-022-00135-3) .....	37.00	July 1, 1994	70-79 .....	(869-022-00183-3) .....	24.00	Oct. 1, 1994
<b>37</b> .....	(869-022-00136-1) .....	20.00	July 1, 1994	80-End .....	(869-022-00184-1) .....	26.00	Oct. 1, 1994
<b>38 Parts:</b>				<b>48 Chapters:</b>			
0-17 .....	(869-022-00137-0) .....	30.00	July 1, 1994	1 (Parts 1-51) .....	(869-022-00185-0) .....	36.00	Oct. 1, 1994
18-End .....	(869-022-00138-8) .....	29.00	July 1, 1994	1 (Parts 52-99) .....	(869-022-00186-8) .....	23.00	Oct. 1, 1994
<b>39</b> .....	(869-022-00139-6) .....	16.00	July 1, 1994	2 (Parts 201-251) .....	(869-022-00187-6) .....	16.00	Oct. 1, 1994
<b>40 Parts:</b>				2 (Parts 252-299) .....	(869-022-00188-4) .....	13.00	Oct. 1, 1994
1-51 .....	(869-022-00140-0) .....	39.00	July 1, 1994	3-6 .....	(869-022-00189-2) .....	23.00	Oct. 1, 1994
52 .....	(869-022-00141-8) .....	39.00	July 1, 1994	7-14 .....	(869-022-00190-6) .....	30.00	Oct. 1, 1994
53-59 .....	(869-022-00142-6) .....	11.00	July 1, 1994	15-28 .....	(869-022-00191-4) .....	32.00	Oct. 1, 1994
60 .....	(869-022-00143-4) .....	36.00	July 1, 1994	29-End .....	(869-022-00192-2) .....	17.00	Oct. 1, 1994
61-80 .....	(869-022-00144-2) .....	41.00	July 1, 1994	<b>49 Parts:</b>			
81-85 .....	(869-022-00145-1) .....	23.00	July 1, 1994	1-99 .....	(869-022-00193-1) .....	24.00	Oct. 1, 1994
86-99 .....	(869-022-00146-9) .....	41.00	July 1, 1994	100-177 .....	(869-022-00194-9) .....	30.00	Oct. 1, 1994
100-149 .....	(869-022-00147-7) .....	39.00	July 1, 1994	178-199 .....	(869-022-00195-7) .....	21.00	Oct. 1, 1994
150-189 .....	(869-022-00148-5) .....	24.00	July 1, 1994	200-399 .....	(869-022-00196-5) .....	30.00	Oct. 1, 1994
190-259 .....	(869-022-00149-3) .....	18.00	July 1, 1994	400-999 .....	(869-022-00197-3) .....	35.00	Oct. 1, 1994
260-299 .....	(869-022-00150-7) .....	36.00	July 1, 1994	1000-1199 .....	(869-022-00198-1) .....	19.00	Oct. 1, 1994
300-399 .....	(869-022-00151-5) .....	18.00	July 1, 1994	1200-End .....	(869-022-00199-0) .....	15.00	Oct. 1, 1994
400-424 .....	(869-022-00152-3) .....	27.00	July 1, 1994	<b>50 Parts:</b>			
425-699 .....	(869-022-00153-1) .....	30.00	July 1, 1994	1-199 .....	(869-022-00200-7) .....	25.00	Oct. 1, 1994
700-789 .....	(869-022-00154-0) .....	28.00	July 1, 1994	200-599 .....	(869-022-00201-5) .....	22.00	Oct. 1, 1994
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<sup>1</sup>Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

<sup>2</sup>The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>3</sup>The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

<sup>4</sup>No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1995. The CFR volume issued April 1, 1990, should be retained.

<sup>5</sup>No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

<sup>6</sup>No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

<sup>7</sup>No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.

<sup>8</sup>No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.