

# Federal Register

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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

- WHEN:** September 12 at 9:00 am  
**WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street NW., Washington, DC (3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538

### ATLANTA, GA

- WHEN:** September 20 at 9:00 am  
**WHERE:** Centers for Disease Control 1600 Clifton Rd., NE, Auditorium A Atlanta, GA
- RESERVATIONS:** 404-639-3528 (Atlanta area)  
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### **Electronic Bulletin Board**

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

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# Rules and Regulations

Federal Register

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Tuesday, August 1, 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 316

RIN 3206-AG 62

### Bringing Nonpermanent Excepted Positions Into the Competitive Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Final regulations.

**SUMMARY:** The Office of Personnel Management (OPM) is revising its regulations governing retention of employees whose excepted positions are brought into the competitive service to permit the employees to receive term appointments if their excepted appointments had time limits longer than 1 year. This will avoid hardship to the employees, who could otherwise be retained only as temporary employees without benefits.

**EFFECTIVE DATE:** August 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Tracy E. Spencer, (202) 606-0830, or fax (202) 606-0390.

**SUPPLEMENTARY INFORMATION:** Civil Service Rule III (5 CFR 3.1) authorizes OPM to prescribe conditions under which "a person who occupies a permanent position when it is placed in the competitive service \* \* \* or is otherwise made subject to competitive examination" may acquire a competitive status. OPM's regulations implementing this authority are found in 5 CFR 315.701, 316.701, and 316.702.

Currently, those regulations permit nonpermanent employees whose positions are brought into the competitive service to be retained only under temporary appointments limited to 1 year or less. However, some nonpermanent excepted appointments are more comparable to term appointments, i.e., they are made for periods longer than 1 year and confer

eligibility for within-grade increases, promotions and reassignments, and retirement and insurance benefits.

On April 7, 1995 (60 FR 17655), we proposed regulations to permit employees holding such appointments to receive noncompetitive term appointments if their positions are brought into the competitive service. We received no substantive comments on the proposed regulations and are adopting them as final regulations with no change. The regulations also make editorial changes and remove obsolete references to the Federal Personnel Manual.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they apply only to Federal employees.

### List of Subjects in 5 CFR Part 316

Government employees.  
Office of Personnel Management.  
**James B. King,**  
*Director.*

Accordingly, OPM is amending 5 CFR part 316 as follows:

### PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 continues to read as follows:

**Authority:** 5 U.S.C. 3301, 3302, and E.O. 10577 (3 CFR 1954-1958 Comp., p. 218); § 316.302 also issued under 5 U.S.C. 3304(c), 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585; § 316.402 also issued under 5 U.S.C. 3304(c) and 3312, 22 U.S.C. 2506 (93 Stat. 371), E.O. 12137, 38 U.S.C. 2014, and E.O. 12362, as revised by E.O. 12585 and E.O. 12721.

2. In § 316.701, paragraph (c) is revised to read as follows:

### § 316.701 Public or private enterprise taken over by the Government.

\* \* \* \* \*  
(c) An agency may retain an employee under paragraph (a) of this section in a position that it determines is noncontinuing under a temporary appointment. That appointment may be made for a period not to exceed 1 year and will be subject to the time limits set out in § 316.402.

3. In § 316.702, paragraphs (b)(1) and (c) are revised and a new paragraph (d) is added to read as follows:

### § 316.702 Excepted positions brought into the competitive service.

\* \* \* \* \*  
(b)(1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency may convert that employee's appointment to career or career-conditional under § 315-701.  
\* \* \* \* \*

(c) An employee who was serving under an excepted appointment limited to 1 year or less may be retained as a temporary employee under paragraph (a) of this section until the scheduled expiration date of the employee's excepted appointment. Extension of the employee's temporary appointment beyond that date will be subject to the provisions of § 316.402.

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The appointment will be subject to all conditions generally applicable to term appointments and may be extended up to the maximum limit for term appointments established under § 316.301. Service under the employee's excepted appointment counts against the maximum limit for the term appointment.

[FR Doc. 95-18709 Filed 7-31-95; 8:45 am]  
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Parts 301 and 319

[Docket No. 94-069-2]

### Unshu Oranges From the Republic of Korea

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

**SUMMARY:** We are amending the regulations governing the importation and interstate movement of citrus fruit to allow, under certain conditions,

Unshu oranges grown in citrus-canker free zones on Cheju Island, Republic of Korea, to be imported into the United States and moved interstate. This action relieves restrictions on the importation into and distribution within the United States of Unshu oranges from Cheju Island, Republic of Korea, without presenting a significant risk of spreading citrus canker.

**EFFECTIVE DATE:** July 24, 1995.

**FURTHER INFORMATION CONTACT:** Mr. Peter Grosser or Mr. Frank Cooper, Senior Operations Officers, Port Operations, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737-1236, (301) 734-6799.

**SUPPLEMENTARY INFORMATION:**

**Background**

Citrus canker is a disease that affects citrus, and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in the Republic of Korea infects the twigs, leaves, and fruit of a wide spectrum of *Citrus* species.

The regulations in 7 CFR 319.28 (referred to below as the regulations) prohibit the importation of citrus from Eastern and Southeastern Asia, Japan, Brazil, Paraguay, and other designated areas, except for Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma) grown in citrus canker-free areas in Japan. After meeting certain growing, packing, and inspection requirements, Japanese Unshu oranges may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States. Also, under the regulations in 7 CFR 301.83, Unshu oranges grown in Japan are prohibited from being moved interstate from any quarantined area into or through any nonquarantined area of the United States; all areas of the United States, except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States, are quarantined.

On March 29, 1995, we published in the **Federal Register** (60 FR 16067-16069, Docket No. 94-069-1) a proposal to amend the regulations by allowing the importation of Unshu oranges from Cheju Island, Republic of Korea, under the same conditions that apply to Unshu oranges grown in Japan. We proposed to allow these importations at the request of the Ministry of Agriculture, Forestry and Fisheries of the Republic of Korea, and after the Animal and Plant Health

Inspection Service (APHIS) conducted pest risk assessments that indicated that Unshu oranges from Cheju Island, Republic of Korea, could be imported into the United States under the conditions proposed without significant plant pest risk. Copies of the pest risk assessments are available, upon written request, from the person listed under **FOR FURTHER INFORMATION CONTACT**.

We solicited comments concerning our proposal for 30 days ending April 28, 1995. We received three comments by that date. They were from a state department of agriculture and two industry groups. One comment supported the proposal as written. Two commenters were both concerned with the potential pest risk and the replacement of plant pathologists with plant protection officers. The comments are discussed below by topic.

**Pest Risk**

Two commenters expressed concerns that the pest risk review was inadequate. They both felt that too much emphasis was placed on comparisons to Japan and the implied similarity in the growing areas. One commenter agreed that our experience with Japan showed a minimal threat from the importation of Unshu Oranges from Japan. However, that commenter was concerned about the lack of experience that we have with the Republic of Korea and recommended that we should only permit Unshu oranges from the Republic of Korea to be imported into greatly restricted areas of the United States, as was done many years ago for Unshu oranges from Japan. The other commenter was concerned about the occurrence of citrus canker on Cheju Island, Republic of Korea. Both commenters were concerned about the interception of black spot on Unshu oranges from the Republic of Korea.

The regulations in 7 CFR 319.28(b) detail extensive safeguards on the growing, packing, and inspection of Unshu oranges exported from Japan into the United States. These safeguards also will apply to Unshu oranges imported from the Republic of Korea. Recent pest risk assessments for Unshu oranges from Japan and the Republic of Korea have shown that these safeguards will prevent the introduction of citrus canker and other citrus diseases from Unshu oranges imported into the United States from both Japan and Cheju Island, Republic of Korea.

Our recommendation to permit entry under specified conditions was based on literature surveys for plant pests, the pest list provided by Korea, records of pest interceptions at U.S. ports, surveys conducted by Korea, and two on-site

surveys conducted by APHIS. We also used our experience with the success of the safeguards used in Japan. We reviewed the evidence gathered from the sources mentioned above to determine what pests we might encounter. Although, citrus canker does occur in the Republic of Korea, one of our requirements is that the Unshu oranges must be grown and packed in canker-free export areas. These export areas must also be surrounded by a 400-meter-wide canker-free buffer zone in which only certain varieties of citrus may be grown. These safeguards, sterilizations, and other precautions, are sufficient to ensure the Unshu oranges are canker-free.

The comment about black spot of citrus disease referred to interceptions of black spot on Unshu oranges from the Republic of Korea. Citrus fruit from the Republic of Korea has been prohibited entry into the United States, therefore, we have no interception records of black spot from export quality fruit. Interceptions of fruit with black spot, referred to by the commenter, were from baggage and therefore may or may not have been on fruit produced in the Republic of Korea. Evidence of the occurrence of black spot in the Republic of Korea is inconclusive. Quarantine officials from the National Plant Quarantine Service of the Republic of Korea have stated that the disease has not been detected in their surveys. However, even if black spot is present in the Republic of Korea, we have determined that the safeguards provided for in the regulations will prevent the introduction of citrus-canker and other citrus diseases such as black spot into the United States from Unshu oranges from the Republic of Korea. Therefore, we are not making any changes based on this comment.

One commenter was concerned that no workplan was available to verify the Republic of Korea's ability to comply with the requirements for certification.

A workplan is an agreement that identifies both countries' responsibilities for preclearance programs. Workplans for the importation into the United States of fruits and vegetables under preclearance programs are implemented prior to commencement of a preclearance program. These workplans are not drafted or evaluated until a proposed rule has been published in the **Federal Register**. A workplan between APHIS and the Republic of Korea's plant protection services has been agreed to and will be implemented soon. Therefore, we are not making any changes based on this comment.

### Plant Protection Officers

Two commenters were concerned about the replacement of plant pathologists with plant protection officers. They felt that the required inspections should continue to be performed by qualified plant pathologists. One commenter believed that plant protection officers might accurately identify canker symptoms, but that only trained plant pathologists could detect the incidence of other diseases, such as black spot, on fruit presented for inspection. It is our experience that plant protection officers can be trained to detect these diseases in the field, and that requiring plant pathologists to inspect the fruit is unnecessary.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, without change.

### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Unshu oranges from Korea will begin soon. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

### Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 601 *et seq.*, we have performed a Final Regulatory Flexibility Analysis, set forth below, regarding the economic impact of this rule on small entities.

This final rule allows Unshu oranges grown on Cheju Island, Republic of Korea, to be imported into and through 45 States after meeting certain requirements.

Unshu oranges are imported for a small market in the United States and sell for two to three times the price of

the domestically grown Satsuma tangerines, a citrus fruit similar to the Unshu orange. Imported Unshu oranges are available for only a short period each year, from early November into mid-January.

In the 1992–93 growing season, domestic producers grew approximately 362 million pounds of tangerines in Arizona, California, and Florida. We estimate annual domestic production of Satsuma tangerines to be about 1.9 million pounds, 0.52 percent of total domestic tangerine production.

We anticipate that following the promulgation of this rule, the Republic of Korea initially could export about 1.1 million pounds of Unshu oranges to the United States and increase this amount to around 3.3 to 4.4 million pounds within a few years. While 4.4 million pounds of imported Unshu oranges from the Republic of Korea would only amount to 1.2 percent of the total domestic tangerine production, it would constitute over twice the annual domestic production of Satsuma tangerines. Again, however, these imported Unshu oranges could cost up to three times as much as domestically produced Satsuma tangerines.

The aggregate economic impact of this rule is expected to be positive. U.S. consumers will benefit from a greater availability of Unshu oranges. U.S. importers will also benefit from a greater availability of Unshu oranges to import.

In the course of rulemaking, if we had come across evidence indicating that importation of Unshu oranges from the Republic of Korea would pose a significant risk of plant pest introduction, we would have considered either developing alternative requirements regarding that importation or continuing to prohibit the importation of Unshu oranges from the Republic of Korea. However, our pest risk assessments and our review of public comments on the proposal indicated that importation of Unshu oranges from the Republic of Korea would pose no significant risk of plant pest introduction.

### Executive Order 12778

This rule allows Unshu oranges to be imported into the United States from Cheju Island, Republic of Korea. State and local laws and regulations regarding Unshu oranges imported under this rule will be preempted while the fruit is in foreign commerce. Fresh Unshu oranges are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign

commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule; and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

### Paperwork Reduction Act

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

### List of Subjects

#### 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 are amended as follows:

### PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

#### § 301.83 [Amended]

2. In § 301.83, paragraph (a) is amended by adding the phrase “or on Cheju Island, Republic of Korea,” immediately following “Japan”.

### PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167, and 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

#### § 319.28 [Amended]

4. Section 319.28 is amended as follows:

- a. Paragraph (a)(1) is amended by adding the phrase “the Republic of Korea,” immediately following the phrase “Japan and adjacent islands.”
- b. In paragraph (b), the introductory text is amended by adding the phrase “or on Cheju Island, Republic of Korea,” immediately following “Japan”.
- c. In paragraph (b)(1), the first sentence is amended by removing the phrase “Japanese Plant Protection

Service" and adding the phrase "plant protection service of the country of origin" in its place; and in the third and sixth sentences, the word "pathologists" is removed and the phrase "protection officers" is added in its place and the word "Japan" is removed and the phrase "the country of origin" is added in its place.

d. Paragraph (b)(2) is amended by removing the word "pathologists" and adding the phrase "protection officers" in its place and by removing the word "Japan" and adding the phrase "the country of origin" in its place.

e. Paragraph (b)(4)(ii) is amended by removing the phrase "Japanese Plant Protection Service" and adding the phrase "plant protection service of the country of origin" in its place.

f. Paragraph (b)(7) is removed.

g. In paragraph (f), the word "Japan" is removed and the phrase "the country of origin of the Unshu oranges" is added in its place.

Done in Washington, DC, this 24th day of July 1995.

**Lonnie J. King,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-18778 Filed 7-31-95; 8:45 am]

BILLING CODE 3410-34-P

## Agricultural Marketing Service

### 7 CFR Parts 922, 923, and 924

[Docket No. FV95-922-2IFR]

#### Expenses for the 1995-96 Fiscal Year for Specified Marketing Orders

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

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

**SUMMARY:** This interim final rule authorizes expenses for the 1995-96 fiscal year for Marketing Orders (M.O.) No. 922 and 923, covering apricots and sweet cherries grown in designated counties in Washington, and M.O. No. 924 covering fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization of these budgets enables the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Marketing Committee (Committees) established under these marketing orders to incur expenses that are reasonable and necessary to administer the programs. Funds to administer the programs are derived from assessments on handlers.

**DATES:** Effective beginning April 1, 1995, through March 31, 1996. Comments must be received by August 31, 1995.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; or by FAX: (202) 720-5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW., Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326-2724.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreements and Marketing Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action authorizes expenses for the 1995-96 fiscal period which began April 1, 1995, through March 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that

the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. 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 date of the entry of the ruling.

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

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

There are about 55 handlers of Washington apricots, 55 handlers of Washington sweet cherries, and 30 handlers of Washington-Oregon fresh prunes subject to regulation under their respective marketing orders. In addition, there are about 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by each marketing order committee and submitted to the Department for approval. The members of the Committees are handlers and producers of the regulated commodities. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly

affected persons have an opportunity to participate and provide input.

The Washington Apricot Marketing Committee met on May 25, 1995, and unanimously recommended 1995-96 expenses of \$9,594, which is \$4,008 less in expenses than the \$13,602 amount that was recommended for the 1994-95 fiscal year.

Shipments of fresh apricots for the current fiscal year are estimated at 5,150 tons. Funds in the reserve, estimated at \$16,798, will be adequate to cover the recommended expense amount.

The Washington Cherry Marketing Committee also met on March 25, 1995, and unanimously recommended 1995-96 expenses of \$55,393. This represents a decrease of \$44,820 from the \$100,213 recommended for the previous fiscal year.

The Committee anticipates shipments of 41,000 tons of fresh sweet cherries. Funds in the reserve, estimated at \$112,995, will be adequate to cover budgeted expenses.

The Washington-Oregon Fresh Prune Marketing Committee also met on March 25, 1995, and unanimously recommended a 1995-96 expense amount of \$10,018. In comparison, this represents a decrease of \$8,742 in expenses from the \$18,760 that was recommended for 1994-95 fiscal year.

Shipments of fresh prunes for the current fiscal year are estimated at 4,900 tons. Funds in the reserve, estimated at \$16,204, will adequately cover recommended expenses.

Each Committee unanimously voted against having assessment rates for their respective programs for the 1995-96 fiscal year. In comparison, assessment rates for the 1994-95 fiscal year were \$0.50 per ton for fresh apricots, \$1.00 per ton for sweet cherries, and \$1.00 per ton for fresh prunes.

Major expense categories for the Committees are for the administration of these marketing orders. Administrative expenses include \$43,000 for salaries, \$2,700 for travel, and \$15,600 for office operations. The stone fruit marketing Committees share office expenses, based on an agreement among the Committees.

Since no assessment rates are being recommended at this time, no additional costs will be imposed on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including information and recommendations submitted by the Committees and other available information, it is hereby found that this

rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1995-96 fiscal year for the Committees began April 1, 1995, and the Committees need to have approval to pay their respective expenses which are incurred on a continuous basis; (2) this action is similar to previously recommended budgets; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

#### List of Subjects

##### 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are amended as follows:

1. The authority citation for 7 CFR parts 922, 923, and 924 continues to read as follows:

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

**Note:** These sections will not appear in the Code of Federal Regulations.

#### PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 922.234 is added to read as follows:

##### § 922.234 Expenses and assessment rate.

Expenses of \$9,594 by the Washington Apricot Marketing Committee are authorized for the fiscal year ending March 31, 1996. Any unexpended funds may be carried over as a reserve.

#### PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new § 923.235 is added to read as follows:

##### § 923.235 Expenses and assessment rate.

Expenses of \$55,393 by the Washington Cherry Marketing Committee are authorized for the fiscal year ending March 31, 1996. Any unexpended funds may be carried over as a reserve.

#### PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

4. A new § 924.235 is added to read as follows:

##### § 924.235 Expenses and assessment rate.

Expenses of \$10,018 by the Washington-Oregon Fresh Prune Marketing Committee are authorized for the fiscal year ending March 31, 1996. Any unexpended funds may be carried over as a reserve.

Dated: July 26, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95-18787 Filed 7-31-95; 8:45 am]

BILLING CODE 3410-02-P

#### 7 CFR Part 948

[Docket No. FV95-948-1FIR]

#### Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

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

**ACTION:** Final rule.

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

**EFFECTIVE DATE:** July 1, 1995, through June 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503-326-2724.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Colorado potatoes are subject to assessments. Funds to administer the Colorado potato marketing order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1995-96 fiscal period, which began July 1, 1995, and ends June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 producers of Colorado Area III potatoes under the marketing order and approximately 15 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Colorado Area III potato producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area III potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

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

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met on April 13, 1995, and unanimously recommended a 1995-96 budget of \$27,362.50, \$3,037.50 more than the previous year. Budget items for the 1995-96 Federal portion of the administrative budget which have increased compared to those budgeted for 1994-95 (in parentheses) are: Audit, \$450 (\$400), medical insurance, \$685 (\$620), office equipment, \$4,500 (\$2,000), payroll tax, \$902.50 (\$880), Federal meetings, \$500 (\$400), and \$300 for other salary for

which no funding was recommended last year.

The Committee also unanimously recommended an assessment rate of \$0.02 per hundredweight, the same as last season. This rate, when applied to anticipated potato shipments of 1,200,500 hundredweight, will yield \$24,010 in assessment income. This, along with \$1,500 in interest income, \$1,200 in rent from the sublease of office space to the State inspection service, and \$652.50 from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1995-96 fiscal period, estimated at \$35,195, will be within the maximum permitted by the order of two fiscal periods' expenses.

An interim final rule was published in the **Federal Register** on May 31, 1995 (60 FR 28318). That interim final rule added \$948,213 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through June 30, 1995. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995-96 fiscal period began on July 1, 1995. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

**List of Subjects in 7 CFR Part 948**

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

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

**PART 948—IRISH POTATOES GROWN IN COLORADO**

Accordingly, the interim final rule adding § 948.213 which was published at 60 FR 28318, May 31, 1995, is adopted as a final rule without change.

Dated: July 26, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95-18786 Filed 7-31-95; 8:45 am]

BILLING CODE 3410-02-P

**7 CFR Part 993**

[Docket No. FV95-993-11FR]

**Dried Prunes Produced in California; Expenses and Assessment Rate**

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

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

**SUMMARY:** This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 993 for the 1995-96 crop year. Authorization of this budget enables the Prune Marketing Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

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

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

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918; or Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, California 93721, telephone 209-487-5901.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California prunes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable prunes handled during the 1995-96 crop year, which begins August 1, 1995, and ends July 31, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

The purpose of the RFA is to fit regulatory actions to the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

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

There are approximately 1,360 producers of California dried prunes under this marketing order, and approximately 20 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of California dried prune producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 crop year was prepared by the Prune Marketing Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

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

The Committee met June 22, 1995, and unanimously recommended a 1995-96 budget of \$275,280, \$5,080 more than the previous year. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Executive salaries, \$87,980 (\$83,850), clerical salaries, \$19,440 (\$18,650), office rent, \$22,000 (\$21,500), postage and messenger, \$5,500 (\$5,000), rental of equipment, \$3,000 (\$500), purchase of equipment, \$5,000 (\$4,500), acreage survey, \$10,500 (\$10,000), and reserve for contingencies, \$19,310 (\$19,250). Items which have decreased compared to the amount budgeted for 1994-95 (in parentheses) are: Employee benefits \$15,400

(\$15,800), repairs and maintenance, \$3,000 (\$4,000), stationary and printing, \$4,000 (\$6,500), and Committee travel, \$9,000 (\$9,500). All other items are budgeted at last year's amounts.

The Committee also unanimously recommended an assessment rate of \$1.55 per salable ton, \$0.05 less than the previous year. This rate, when applied to anticipated shipments of 177,600 salable tons, will yield \$275,280 in assessment income, which will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the crop year begins on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable California prunes handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

### List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

### PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 993.346 is added to read as follows:

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

#### § 993.346 Expenses and assessment rate.

Expenses of \$275,280 by the Prune Marketing Committee are authorized, and an assessment rate of \$1.55 per salable ton of dried prunes is established for the crop year ending July 31, 1996. Unexpended funds may be carried over as a reserve within the limitations specified in § 993.81(c).

Date: July 26, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*  
[FR Doc. 95–18788 Filed 7–31–95; 8:45 am]

BILLING CODE 3410–02–P–M

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR PART 132

[T.D. 95–58]

RIN 1515–AB73

#### Export Certificates for Beef Subject to Tariff-Rate Quota

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This document amends the Customs Regulations on an interim basis in order to set forth the form and manner by which an importer makes a declaration that a valid export certificate is in effect for imported beef which is the subject of a tariff-rate quota and the product of a participating country, as defined in interim regulations of the United States Trade Representative.

**DATES:** Interim rule effective August 1, 1995; comments must be received on or before October 2, 1995.

**ADDRESSES:** Written comments (preferably in triplicate) may be addressed to the Regulations Branch,

Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Karen Cooper, Quota Branch, (202) 927–5401.

#### SUPPLEMENTARY INFORMATION:

##### Background

As a result of the Uruguay Round Agreements, approved by Congress in section 101 of the Uruguay Round Agreements Act (Pub. L. 103–465), the President, by Presidential Proclamation No. 6763, established a tariff-rate quota for imported beef.

Briefly, under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota tariff rate, to imports of the product in excess of the given amount. Of course, the preferential, in-quota tariff rate would be applicable only to the extent that the in-quota quantity for the country involved had not been exceeded.

The specific imported beef, as well as the various countries, eligible for the in-quota tariff rate are set forth in Additional U.S. Note 3, Schedule XX, Chapter 2, of the Harmonized Tariff Schedule of the United States. The eligible countries which may export such beef to the United States and avail themselves of the preferential, in-quota tariff rate include Australia, New Zealand and Japan.

As part of the implementation of the tariff-rate quota for beef, the United States, specifically, the United States Trade Representative (USTR), is offering these exporting countries that have an allocation of the in-quota quantity the opportunity to use export certificates for their qualifying beef exports to the United States. Although countries that have an allocation of the in-quota quantity are referred to in the statutory law as “participating countries”, for purposes of this interim rule, a participating country constitutes an allocated country that has been authorized to participate in the export certificate program. Notably, New Zealand has already requested the opportunity to participate in the export certificate program.

While a country does not need to participate in the export certificate program in order to receive the in-quota

tariff rate for its share of the in-quota quantity, using export certificates provides an effective and expeditious means of assuring an exporting country that only those exports that it intends for the United States market are counted against its in-quota allocation, which helps ensure that such exports do not disrupt the orderly marketing of beef in the United States.

An exporting country using export certificates in this regard must notify the USTR and provide the necessary supporting information. Customs will then be responsible for ensuring that no imports of beef from that country are counted against the country's in-quota allocation unless such beef is covered by a proper export certificate.

Accordingly, the USTR has undertaken interim rulemaking in this matter (15 CFR part 2012) (60 FR 15229, March 23, 1995). In addition, along with the interim rulemaking of the USTR, Customs is issuing this interim rule in order to set forth the form and manner by which an importer declares that a valid export certificate exists, including a unique number therefor which must be referenced on the entry, or withdrawal from warehouse, for consumption. This interim rule also sets forth the record retention period for the certificate and requires the submission of such certificate to Customs upon request.

#### Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., Washington, DC.

#### Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim rule because it is within the foreign affairs function of the United States. Furthermore, for the above reason, pursuant to 5 U.S.C. 553 (d)(1) and (d)(3), there is no need for a delayed effective date.

#### Executive Order 12866

Because this document involves a foreign affairs function of the United

States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

#### Drafting Information

The principal author of this document was Russell Berger, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

#### List of Subjects in 19 CFR Part 132

Customs duties and inspection, Imports, Postal service, Quotas.

#### Amendment to the Regulations

Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR ch. I), is amended as set forth below.

#### PART 132—QUOTAS

1. The general authority citation for part 132 continues to read as follows, and specific sectional authority for § 132.15 is added, to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.  
§ 132.15 also issued under 19 U.S.C. 1484, 1508, and Schedule XX, HTSUS.

2. Part 132 is amended by adding a new § 132.15 to read as follows:

#### § 132.15 Export certificate for beef subject to tariff-rate quota.

(a) *Requirement.* In order to claim the in-quota tariff rate of duty on beef, defined in 15 CFR 2012.2(a), that is the product of a participating country, defined in 15 CFR 2012.2(e), the importer must possess a valid export certificate at the time that such beef is entered, or withdrawn from warehouse for consumption. The importer shall record the unique identifying number of the export certificate on the entry summary or the warehouse withdrawal (CF 7501, column 34).

(b) *Validity of certificate.* The export certificate, to be valid, must meet the requirements of 15 CFR 2012.3(b), and with respect to the requirement of 15 CFR 2012.3(b)(3) that the certificate be distinct and uniquely identifiable, the certificate must have a distinct and unique identifying number composed of three elements set forth in the following order:

- (1) The last digit of the year for which the export certificate is in effect;
- (2) The 2-digit ISO country of origin code from Annex B of the HTSUS which

identifies the participating country (see § 142.42(d) of this chapter); and

(3) Any 6-digit number issued by the participating country with respect to the export certificate.

(c) *Retention and submission of certificate to Customs.*

(1) *Retention.* The export certificate must be retained by the importer for a period of at least 5 years from the date of entry, or withdrawal from warehouse, for consumption (see § 162.1c of this chapter).

(2) *Submission to Customs.* The importer shall submit a copy of the export certificate to Customs upon request.

Approved: July 25, 1995.

**George J. Weise,**

*Commissioner of Customs.*

**Dennis M. O'Connell,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 95-18814 Filed 7-31-95; 8:45 am]

BILLING CODE 4820-02-P

#### Internal Revenue Service

#### 26 CFR Part 31

[TD 8604]

RIN 1545-AS22

#### Liability of Third Parties Paying or Providing for Wages: Suit Period and Its Extension and Maximum Amount Recoverable

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations regarding the liability of lenders, sureties, or other third persons for withholding taxes when those persons have supplied funds, either directly to employees or to or for the account of an employer, for the specific purpose of paying wages of the employees of that employer. The final regulations affect third parties paying or providing for wages.

**EFFECTIVE DATE:** August 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Walker, (202) 622-3640 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

These final regulations contain changes to § 31.3505-1. Section 3505 of the Internal Revenue Code (Code) was added by section 105(a) of the Federal Tax Lien Act of 1966, Public Law 89-719 (1966). Treasury regulations were issued with an effective date of August

19, 1976 (TD 7430). Neither the Code section nor the regulations has been amended since enactment or issuance, respectively. The IRS published a notice of proposed rulemaking in the **Federal Register** on November 22, 1994, (59 FR 60099) providing proposed rules under section 3505 of the Code. No public comments were received and accordingly, the final regulations are identical to the proposed regulations.

**Explanation of Provisions**

Under section 3505(b), if a lender, surety, or other person (the lender) supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of that employer, and the lender has actual notice or knowledge (within the meaning of section 6323(i)(1)) that the employer does not intend or will not be able to make timely payment or deposit of the required withholding taxes, the lender shall be liable to the United States in a sum equal to the taxes (together with interest) that are not paid over to the United States by the employer with respect to those wages. The lender's liability for withholding taxes, in lieu of the employer, is limited to an amount equal to 25 percent of the amount of wages so supplied to or for the account of the employer. See section 3505(b) (final sentence).

Existing regulations provide that the 25-percent limitation applies only to the tax, and not the interest on that tax, with the result that the lender could be held liable for more than 25 percent of the amount of funds it supplied. The courts that have addressed this issue, however, have held that the 25-percent limitation on the amount of wages supplied by a third party is an absolute cap with respect to the recovery of withholding taxes and prejudgment interest. *United States v. Metro Constr. Co., Inc.*, 602 F.2d 879 (9th Cir. 1979); *United States v. Intercontinental Ind., Inc.*, 635 F.2d 1215 (6th Cir. 1980); *United States v. Hannan Co.*, 639 F.2d 284 (5th Cir. 1981); *Taubman v. United States*, 449 F. Supp. 520 (E.D. Mich. 1978). See also *O'Hare v. United States*, 878 F.2d 953 (6th Cir. 1989); *United States v. Security Pacific Business Credit, Inc.*, 956 F.2d 703 (7th Cir. 1992); *United States v. Vaccarella*, 735 F. Supp. 1421 (S.D. Ind. 1990).

These final regulations conform to judicial interpretation and clarify that interest will continue to be computed in addition to any withholding tax liability, but only to an overall maximum of 25 percent of the amount of the funds supplied by the lender.

The final regulations also change the period of limitations for collection of

the withholding taxes and interest from six years to ten years. This revision will conform the period of limitations for the purposes of section 3505 with the general rule on limitations on collection. See section 6502, amended by the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, section 11317(a)(1) (1990).

Finally, § 31.3505-1(d)(3) has been added to provide for extensions of the period of limitation for collection because, on occasion, the IRS or the lender requires additional time for compliance with the regulation.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these final regulations is Robert Walker, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 31**

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social Security, Unemployment compensation.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 31 is amended as follows:

**PART 31—EMPLOYMENT TAXES**

**Paragraph 1.** The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**§ 31.3505-1 [Amended]**

**Par. 2.** Section 31.3505-1 is amended by:

1. Removing the phrase "for such taxes" from the second sentence of paragraph (b)(1).

2. Removing the phrase "plus interest thereon" from the final sentence of paragraph (b)(2), *Example (1)*.

3. Removing the phrase "for withholding taxes" from the fifth sentence of paragraph (b)(2), *Example (2)*.

4. Removing the phrase "plus interest thereon" from the final sentence of paragraph (b)(2), *Example (2)*.

5. Revising the final sentence of paragraph (d)(1).

6. Revising the final sentence of paragraph (d)(2)(iii).

7. Adding paragraphs (d)(3) and (g).

The additions and revisions read as follows:

**§ 31.3505-1 Liability of third parties paying or providing for wages.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \* In the event that the lender, surety, or other person does not satisfy the liability imposed by section 3505, the United States may collect the liability by appropriate civil proceedings commenced within 10 years after assessment of the tax against the employer.

\* \* \* \* \*

(2) \* \* \*

(iii) \* \* \* Thus, after the second payment by the employer, the lender's liability under section 3505(b) is \$75 (\$250 less \$175), plus interest due on the underpayment for the period of underpayment, to a maximum of \$250, 25 percent of the funds supplied.

(3) *Extensions of the period for collection.* Prior to the expiration of the 10-year period for collection after assessment against the employer, the lender, surety, or other third party may agree in writing with the district director, service center director, or compliance center director to extend the 10-year period for collection. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If any timely proceeding in court for the collection of the tax and any applicable interest is commenced, the period during which such tax and interest may be collected shall be extended and shall not expire until the liability for the tax (or a judgment against the lender, surety, or other third party arising from such liability) is satisfied or becomes unenforceable.

\* \* \* \* \*

(g) *Effective date.* These regulations are effective on August 1, 1995.

**Margaret Milner Richardson,**  
*Commissioner of Internal Revenue.*

Approved: June 21, 1995.

**Leslie Samuels,**

*Assistant Secretary of the Treasury.*

[FR Doc. 95-18625 Filed 7-31-95; 8:45 am]

BILLING CODE 4830-01-U

## POSTAL SERVICE

### 39 CFR Part 111

#### Changes in Preferred Postage Rates— Second-Class Mail, Third-Class Mail, and Fourth-Class Library Rate Mail

**AGENCY:** Postal Service.

**ACTION:** Postage rate changes;  
Corrections.

**SUMMARY:** This document contains postage rate corrections to three of the

several rate tables published in the **Federal Register** on July 5, 1995 (60 FR 34854-34856). As a customer convenience, the corrected tables are reprinted in this document along with the remaining tables published on that date.

**EFFECTIVE DATE:** The Board of Governors has directed that the changes pertaining to postage rates be implemented effective 12:01 a.m., Sunday, October 1, 1995.

**FOR FURTHER INFORMATION CONTACT:**  
Ernest Collins, (202) 268-5316.

In the rules beginning on page 34854 in the issue of Wednesday, July 5, 1995, make the following corrections:

On page 34855 in table 7.0, Special Bulk Third-Class Nonletter-Size Minimum Per-Piece Rates—Pieces 0.2149 Lb. (3.4383 Oz.) or Less, in the eleventh column titled 3/5-Digit Barcoded, the second row shown in the

table was “0.130.” This row should read “0.131.”

On page 34856 in table 8.0, Special Bulk Third-Class Piece/Pound Rates—Pieces More Than 0.2149 Lb. (3.4383 Oz.), in the fourth column titled Carrier route, the second row shown in that table (continued from page 34855) was “0.38.” This row should read “0.386.”

On page 34856 in table 6.0, Library Rates, in the second column titled Single-piece rate, the ninth row through the seventieth row shown in the table began with “3.99” and ended with “16.19.” These should read “4.00” and “16.81,” respectively. All rates shown from 9 pounds through 70 pounds were incorrectly calculated with the accumulative addend of 20 cents. The correct accumulative addend is 21 cents.

Dated: July 27, 1995.

**Stanley Mires,**  
*Chief Counsel, Legislative.*

BILLING CODE 7710-12-P

**Changes in Preferred Postage Rates—Second-, Third-, and Fourth-Class Mail Effective October 1, 1995**

**Domestic Mail Manual**

**R—Rates and Fees**

\* \* \* \* \*

**R200 Second-Class Mail**

\* \* \* \* \*

**2.0 IN-COUNTY RATES**

\* \* \* \* \*

**2.2 Piece Rates**

Per addressed piece:

Level	Regular	ZIP+4 (Letter-Size)	Barcoded (Letter-Size)	ZIP+4 Barcoded (Flat-Size)
J1	\$0.080	\$0.080	\$0.080	\$0.080
J3	0.080	0.076	0.076	0.065
J5	0.080	0.076	0.063	0.065
K1	0.042	—	—	—
K2	0.037	—	—	—
K3	0.035	—	—	—

\* \* \* \* \*

**3.0 SPECIAL NONPROFIT RATES**

**3.1 Pound Rates**

Pound rates are:

For the nonadvertising portion—\$0.140 per pound or fraction.

\* \* \* \* \*

**3.2 Piece Rates**

Per addressed piece:

Level	Regular	ZIP+4 (Letter-Size)	Barcoded (Letter-Size)	ZIP+4 Barcoded (Flat-Size)
G	\$0.208	\$0.200	\$0.188	\$0.181
H3	0.157	0.152	0.145	0.139
H5	0.157	0.152	0.137	0.139
I1	0.112	—	—	—
I2	0.110	—	—	—
I3	0.104	—	—	—

\* \* \* \* \*

**4.0 CLASSROOM RATES**

\* \* \* \* \*

**4.2 Piece Rates**

Per addressed piece:

Level	Regular	ZIP+4 (Letter-Size)	Barcoded (Letter-Size)	ZIP+4 Barcoded (Flat-Size)
G	\$0.168	\$0.161	\$0.151	\$0.145
H3	0.125	0.121	0.115	0.110
H5	0.125	0.121	0.108	0.110
I1	0.087	—	—	—
I2	0.085	—	—	—
I3	0.080	—	—	—

\* \* \* \* \*

R300 Third-Class Mail

\* \* \* \* \*

6.0 SPECIAL BULK THIRD-CLASS LETTER-SIZE MINIMUM PER-PIECE RATES—PIECES 0.2149 LB. (3.4383 OZ.) OR LESS

Entry Discount	Nonautomation Rates				Automation Rates				
	Basic	3/5	Carrier Route	Saturation W-S	Basic ZIP+4	3/5 ZIP+4	Basic Barcoded	3-Digit Barcoded	5-Digit Barcoded
None	\$0.124	\$0.111	\$0.086	\$0.083	\$0.117	\$0.107	\$0.106	\$0.101	\$0.093
BMC	0.112	0.099	0.074	0.071	0.105	0.095	0.094	0.089	0.081
SCF	0.106	0.093	0.068	0.065	0.099	0.089	0.088	0.083	0.075
Delivery Unit	—	—	0.063	0.060	—	—	—	—	—

7.0 SPECIAL BULK THIRD-CLASS NONLETTER-SIZE MINIMUM PER-PIECE RATES—PIECES 0.2149 LB. (3.4383 OZ.) OR LESS

Entry Discount	Nonautomation Rates					Automation Rates				
	Basic	3/5	Carrier Route	125-Pc. W-S	Saturation W-S	Basic ZIP+4	3/5 ZIP+4	Basic Barcoded	3-Digit Barcoded	3/5-Digit Barcoded
None	\$0.175	\$0.161	\$0.128	\$0.126	\$0.121	—	—	\$0.149	—	\$0.143
BMC	0.163	0.149	0.116	0.114	0.109	—	—	0.137	—	0.131
SCF	0.157	0.143	0.110	0.108	0.103	—	—	0.131	—	0.125
Delivery Unit	—	—	0.105	0.103	0.098	—	—	—	—	—

8.0 SPECIAL BULK THIRD-CLASS PIECE/POUND RATES—PIECES MORE THAN 0.2149 LB. (3.4383 OZ.)

Per Piece/Pound	Nonautomation Rates					Automation Rates				
	Basic	3/5	Carrier Route	125-Pc. W-S	Saturation W-S	Basic ZIP+4	3/5 ZIP+4	Basic Barcoded	3-Digit Barcoded	3/5-Digit Barcoded
Per-Piece Rates (for all entry categories)	\$0.074	\$0.060	\$0.027	\$0.025	\$0.020	—	—	\$0.048	—	\$0.042
	Plus					Plus				
Per-Pound Rates (by entry discount)										
None	\$0.470	\$0.470	\$0.470	\$0.470	\$0.470	—	—	\$0.470	—	\$0.470
BMC	0.410	0.410	0.410	0.410	0.410	—	—	0.410	—	0.410
SCF	0.386	0.386	0.386	0.386	0.386	—	—	0.386	—	0.386
Delivery Unit	—	—	0.362	0.362	0.362	—	—	—	—	—

\* \* \* \* \*

R400 Fourth-Class Mail

\* \* \* \* \*

6.0 LIBRARY RATES

Weight Not Exceeding (pounds)	Single-Piece Rate
1	\$1.12
2	1.53
3	1.94
4	2.35
5	2.76
6	3.17
7	3.58
8	3.79
9	4.00
10	4.21
11	4.42
12	4.63
13	4.84
14	5.05
15	5.26
16	5.47
17	5.68
18	5.89
19	6.10
20	6.31
21	6.52
22	6.73
23	6.94
24	7.15
25	7.36
26	7.57
27	7.78
28	7.99
29	8.20
30	8.41
31	8.62
32	8.83
33	9.04
34	9.25
35	9.46

Weight Not Exceeding (pounds)	Single-Piece Rate
36	\$ 9.67
37	9.88
38	10.09
39	10.30
40	10.51
41	10.72
42	10.93
43	11.14
44	11.35
45	11.56
46	11.77
47	11.98
48	12.19
49	12.40
50	12.61
51	12.82
52	13.03
53	13.24
54	13.45
55	13.66
56	13.87
57	14.08
58	14.29
59	14.50
60	14.71
61	14.92
62	15.13
63	15.34
64	15.55
65	15.76
66	15.97
67	16.18
68	16.39
69	16.60
70	16.81

\* \* \* \* \*

[FR Doc. 95-18847 Filed 7-31-95; 8:45 am]

BILLING CODE 7710-12-C

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 52 and 81**

[OH50-5-7072, FRL-5258-9]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Ohio****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** On May 2, 1995, the United States Environmental Protection Agency (USEPA) published a proposed and direct final rulemaking notice to approve the ozone redesignation request and associated section 175A maintenance plan for Toledo, Ohio under the Clean Air Act. The 30-day comment period for these notices concluded on June 1, 1995. Four comment letters were received in response to the May 2, 1995 proposal, and included adverse comments and a request to extend the comment period. The USEPA withdrew the direct final rulemaking but denied the request to extend the public comment period. This final rule summarizes all adverse comments and USEPA's responses, and finalizes the approval of the redesignation to attainment of the National Ambient Air Quality Standard for ozone and section 175A maintenance plan for the Toledo area.

**EFFECTIVE DATE:** This action will be effective August 1, 1995.

**ADDRESSES:** Copies of the SIP revisions, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Angela Lee at (312) 353-5142 before visiting the Region 5 Office.)

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

**FOR FURTHER INFORMATION CONTACT:** Angela Lee, Regulation Development Section, Air Enforcement Branch (AE-17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-5142.

**SUPPLEMENTARY INFORMATION:****I. Background Information**

The 1977 Act required areas that were designated nonattainment to develop

SIPs with sufficient control measures to expeditiously attain and maintain applicable standards. For Ohio, Lucas and Wood Counties were designated nonattainment for ozone, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR part 81. After enactment of the amended Act on November 15, 1990, the nonattainment designation of the Toledo area continued by operation of law according to section 107(d)(1)(C)(i) of the Act; furthermore, the area was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) (56 FR 56694, November 6, 1991), codified at 40 CFR 81.336.

More recently, ambient monitoring data for the Toledo area show no violations of the ozone National Ambient Air Quality Standard (NAAQS) during the period from 1990 through 1992. The area, therefore, became eligible for redesignation from nonattainment to attainment consistent with the amended Act. On September 17, 1993, Ohio requested redesignation of the area to attainment with respect to the ozone NAAQS. To ensure continued attainment of the ozone standard, Ohio submitted an ozone maintenance SIP for the Toledo area with the redesignation request. On November 1, 1993, Ohio held a public hearing on the maintenance plan and redesignation request.

On May 2, 1995, the USEPA published a proposed (60 FR 21490) and direct final rule (60 FR 21456) to approve the redesignation request and section 175A maintenance plan as revisions to the Ohio ozone State Implementation Plan (SIP). The USEPA withdrew the direct final rule on June 19, 1995, (60 FR 31917) in response to receiving adverse comments. This final rule addresses these comments and takes final action regarding the redesignation and section 175A maintenance plan for the Toledo area.

**II. Summary of Comments and Responses**

USEPA has considered the adverse comments received and has decided to proceed with formal action approving the redesignation. A summary of adverse comments received in response to the May 2, 1995 proposed and direct final rulemaking notices (60 FR 21490, 60 FR 21456) and responses to these comments is provided below. Comments were made by two residents of the Toledo, Ohio area, Environment Canada, and the Citizens Commission for Clean Air in the Lake Michigan Basin.

(1) *Comment:* A commentor objects to the use of the direct final procedure

when the proposed redesignation is neither noncontroversial nor routine. Another commentor objected to the final rule procedure due to insufficient opportunity for public comment. Several commentors requested that the direct final rule be withdrawn and republished as a proposed rule. The commentors also requested a 30 day extension of the public comment period. One commentor stated that "most citizens have not heard about the opportunity to comment, and should be afforded additional time to do so." Another commentor requested an extension of the comment period so that concerns about increased vehicle emissions caused by new road construction projects and a possible increase in highway tolls can be evaluated and addressed.

(1) *Response:* The USEPA did not expect adverse comments regarding the approval of the ozone redesignation request and viewed its decision as noncontroversial since it believed that all of the Clean Air Act requirements for redesignation were met. In response to the adverse comment letters which were received, the USEPA withdrew the direct final rule. In any event, that process preserves the public opportunity to comment as a proposed rule was published the same day as the direct final rule was published at 60 FR 21490.

The USEPA is denying the extension requests because it believes the period provided for public comment was adequate in light of the issues presented by the Toledo redesignation request. USEPA further notes that the public had many opportunities to become informed about the issues as Ohio itself had its own public comment period and that a public function for the rulemaking package was held on March 14, 1995, in Toledo, Ohio, which was shown on television news programs. Moreover, USEPA has already exceeded the statutory deadline of section 107(d)(3)(d) to act on this request which expired on March 17, 1995—and does not believe further delay in the action is appropriate.

(2) *Comment:* Several commentors stated that the last two summers were abnormally cool and that data for the last 10 years indicate a trend toward warmer summers in the Toledo area. The commentors requested that USEPA delay rulemaking so that one or two years of monitoring data could be collected to ensure that the improvement in air quality was not caused by cooler temperatures. The commentors also stated that it would be a waste of resources to redesignate the area to attainment when a violation

would require a redesignation back to nonattainment.

(2) *Response:* The USEPA may not delay action on this redesignation request since section 107(d)(3)(E) requires USEPA to act on complete redesignation requests within 18 months of their receipt—a period that expired on March 17, 1995. Furthermore, in establishing the criteria for determining if an area is in attainment of the ozone standard, USEPA used three years of ambient monitoring data. See 40 CFR part 50, Appendix H. The USEPA notes that the Toledo area has been in attainment for four consecutive three-year periods (1989–1991, 1990–1992, 1991–1993, and 1992–1994). This includes six years of ambient monitoring data. Thus, Toledo has already been in attainment substantially longer than the three-year period required. The CAA expressly contemplates the possibility that areas redesignated to attainment may violate the NAAQS after redesignation and requires contingency plans to address future violations. Ohio has adopted such a plan for Toledo. If a violation occurs, Stage II Vapor Recovery Program (Stage II) and a vehicle inspection and maintenance program (I/M) will be implemented according to a specified schedule. If a violation occurs after these programs have been implemented, nitrogen oxides (NO<sub>x</sub>) Reasonably Available Control Technology requirements will be implemented in the area.

(3) *Comment:* Toledo will not be able to maintain attainment on a permanent and enforceable basis and therefore does not meet requirement 107(d)(3)(E) of the Clean Air Act. The rulemaking notice states that the *measures* are permanent and enforceable, but does not show that the *improvement* is permanent and enforceable. The improvement in air quality is temporary since emission increases resulting from increased vehicle miles travelled (VMT) will surpass the emission reductions from these measures. Short term emissions reductions and cooler temperatures have been used to claim that a long term improvement in air quality has occurred. Long term air quality will not improve and will decrease due to emissions increases which will offset the gains which have been made. Insufficient data has been gathered on which to base a long term prediction, and models have been based on biased assumptions regarding the effect of capacity expansions. The USEPA should require the state to submit additional information regarding current trends in land use and transportation in the Toledo area. The commentor

mentioned trends which were not conducive to efficient transportation such as decreasing bus ridership, increasing tolls on the Ohio Turnpike, widening of I-75 which will lead to increased VMT, increasing single-occupant vehicle capacity, and increasing use of the Toledo Airport. Another commentor submitted excerpts from an article regarding traffic flow on congested roads from the *American Scientist* dated November–December 1988 written by Joel E. Cohen, Professor of Populations, Rockefeller University.

The USEPA and the State of Ohio have failed to demonstrate that the improvement in air quality was due to permanent and enforceable emission reductions rather than atypically cool ozone seasons in 1992 and 1993. Also the controls on the volatility of gasoline through lowering of the Federal Volatility standard and controls new cars under the Federal Motor Vehicle Emissions Control Program (FMVECP) are insufficient to guarantee permanent improvements under the Clean Air Act. These measures represent only a few of the requirements that should have been enacted prior to any serious consideration of the redesignation request by USEPA.

(3) *Response:* Section 107(d)(3)(E)(iii) of the Clean Air Act requires the USEPA to determine that “the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions.” Ohio met this requirement by estimating emission reductions from federally mandated controls on new cars and on fuel volatility as well as reductions which took place at the British Petroleum Refinery. These controls provided a significant reduction in the areas emissions and the State has shown that no additional reductions are needed to maintain the standard. See 60 FR 21456 and 60 FR 21490.

With respect to the issue of unusual meteorology, the USEPA has compared the average meteorological parameters of maximum daily temperature, minimum daily temperature, average daily temperature, cooling degrees, and days with high temperatures greater than 90 degrees fahrenheit for the periods of June through August, 1991 through 1993, with the 30-year norms for these parameters. The 1991 through 1993 averages for these parameters agreed with those for the 30-year norms with only minor differences. Based on these averaged parameters, it can be concluded that the 1991 through 1993

period was not unusually cool in terms of temperatures. Thus, the State has adequately demonstrated that the air quality improvement was not due to unusually favorable meteorology.

To meet section 107(d)(3)(E)(iii), the improvement in air quality does not have to be shown to be permanent, only the measures that resulted in the improvement need to be permanent and enforceable. However, section 107(d)(3)(E)(iv) does require that the area have a fully approved maintenance plan showing that the ozone standard will be maintained for ten years into the future. This can be done through air quality modeling or by using emissions projections. Ohio demonstrated that, by considering the growth in the area (including VMT growth) and existing controls on emission sources, emissions will remain below the attainment year inventory through the year 2005. In projecting mobile source emissions, Ohio obtained VMT based on the Highway Performance Modeling System which uses traffic counting data for the year 1990. To forecast VMT to the year 2005, Ohio used growth parameters based on modeling of the Long Range Transportation Plan (future highway network). This modeling process incorporated population growth estimates from Ohio Data Users Center, employment forecasts and other forecasts of socio-economic data. The methodology which was used to project emissions is reasonable. The USEPA notes that the emissions projection for mobile sources in the maintenance plan establishes the emissions budget which will be used for determining conformity of transportation plans and transportation improvement programs for the Toledo area. The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

The May 2, 1995 notice describes a tracking plan for updating the emission inventory. As discussed, Ohio has committed to submitting periodic inventories every 3 years. Ohio will compare the projected emissions in the redesignation request with actual emissions. If volatile organic compounds (VOC) emissions exceed 95 percent of 1990 levels, Ohio will implement Stage II and/or I/M.

If the periodic inventories exceed the attainment level of emissions in the maintenance plan, the USEPA may issue a SIP call to the area under section 110(k)(5) on the basis that the State made inadequate assumptions in projecting the inventory used to demonstrate maintenance. In this event, the USEPA may require the State to

correct the projection inventory and, if increases are projected, propose and ultimately implement maintenance measure(s) to lower the emissions to a level at or below the attainment year level. Under section 175A of the Clean Air Act, Ohio must submit a demonstration that the ozone standard will be maintained for another ten years, eight years after the area is redesignated to attainment. This is expected to result in the Toledo area maintaining the ozone standard for the next 20 years.

(4) *Comment:* Two commentors requested that USEPA prepare an Environmental Impact Statement (EIS) as the redesignation constitutes a major federal action with the potential for significant impacts on the human environment. A number of transportation and land use control measures which would have resulted under requirements applied to nonattainment areas will not be required. The EIS should consider downwind transport of ozone precursors, and the effect of such transport on the Northeastern United States.

(4) *Response:* USEPA is not required to prepare an EIS in connection with this redesignation. Section 7(c)(1) of the Energy Supply and Environmental Coordination Act (Pub. L. 93-319) states that "[n]o action taken under the Clean Air Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 856)." This redesignation does not affect the applicability of the National Environmental Policy Act (NEPA) to particular transportation projects in the Toledo area. In addition, the transportation and general conformity rules will still apply after the area is redesignated to attainment. (Conformity determinations for transportation plans, transportation improvement projects, and Federal actions must demonstrate that the emissions budget established by the maintenance plan is not exceeded.)

The redesignation does not allow States to automatically remove control programs which have contributed to an area's attainment of a U.S. National Ambient Air Quality Standard (NAAQS) for any pollutant. Sources of ozone precursors in the Toledo area must continue to implement all control equipment and/or measures in accordance with applicable rules, regulations and permits. Other control programs required by the Act will be implemented in the area, regardless of the ozone designation, such as title IV NO<sub>x</sub> controls, section 112 toxic controls and on-board vapor recovery

requirements. Upon redesignation to attainment, Toledo will be subject to the Prevention of Significant Deterioration provisions (PSD) of the Clean Air Act that apply to stationary sources of air pollution.

The State has assessed emission increases due to growth in all potential sources of emissions and has shown that reductions in emissions over the maintenance period will more than offset any increases in emissions of VOC and NO<sub>x</sub>. As stated in the **Federal Register** notice (60 FR 21456), USEPA will address transport of ozone precursors to downwind areas under section 110 of the Clean Air Act based on a domain-wide modeling analysis. Should this or other studies provide a sufficient scientific basis for taking action in the future, the USEPA will take appropriate action notwithstanding the redesignation of the Toledo area to attainment for ozone.

(5) *Comment:* The USEPA should delay rulemaking on this and all other ozone redesignation requests pending a re-evaluation of the current ozone standard to determine if public health is adequately protected. Recent studies indicate that health impacts occur at lower levels of ozone than the current ozone standard.

(5) *Response:* The USEPA is currently in the process of reevaluating the ozone NAAQS and expects to make a final decision in mid-1997. Until any change is made, however, the USEPA is bound to implement the provisions of the Act as they relate to the current standard, including those relating to designations and redesignation. Moreover, as previously noted under section 107(d)(3)(D) USEPA has 18 months in which to act on a redesignation request and has no authority to delay rulemaking until the entire evaluation of the ozone NAAQS is complete.

(6) *Comment:* Ozone levels exceeded 0.124 parts per million (ppm) at the Yondota Avenue monitor in 1991, 1993, and 1994. From these occurrences, and the absence of mandated forceful control measures post 1994, it is very difficult to have the expectation that the Yondota station will remain in attainment.

(6) *Response:* Exceedances of the ozone standard did occur at the Yondota monitor in 1991, 1993 and 1994, but did not cause a violation of the ozone standard. The control measures approved into the State's Implementation Plan will remain in place to ensure that the ozone standard is maintained. Ohio's maintenance demonstration shows that future emission levels will remain below levels associated with attainment. Continued

maintenance of the ozone NAAQS will be determined by continued ambient monitoring. If a violation does occur at the Yondota monitor after the redesignation is approved, Stage II and I/M will be implemented. In addition, the area will be subject to the PSD program, FMVECP, and other measures.

(7) *Comment:* Environment Canada commented that air quality needs to be managed in a regional context and evaluated over a long term period that takes meteorological variations into consideration. Environment Canada is disappointed that current USEPA policy does not reflect this opinion.

Environment Canada believes that the ground level ozone standards in effect in the United States allow such high levels of ozone and ozone precursors to flow into Canada as to make it practically impossible for Canada to reach its ground level ozone objective of 82 parts per billion. Another commentor asserted that USEPA failed to consider adverse impacts of transport of ozone and ozone precursors to the Province of Ontario, Detroit, the Northeastern United States and the Lake Michigan Basin. USEPA has failed to obtain a legally enforceable commitment from the State of Ohio to cooperate in developing a strategy to reduce the documented problem of ozone transport throughout Eastern North America. Another commentor stated that the air quality problem is not being solved, it is being moved off to other downwind states. This breaks the spirit of the Clean Air Act.

(7) *Response:* The USEPA would like to note that the governments of the United States and Canada are in the process of developing a joint study of the transboundary ozone phenomena under the U.S.-Canada Air Quality Agreement. It is envisioned that this regional ozone study will provide the scientific information necessary to understand what contributes to ozone levels in the region, as well as what control measures would contribute to reductions in ozone levels. Should this or other studies provide a sufficient scientific basis for taking action in the future, the USEPA will take an appropriate course of action. The USEPA may take appropriate action notwithstanding the redesignation of the Toledo area. Therefore, the USEPA does not believe that the contentions regarding transboundary impact provide a basis for delaying action at this time on this redesignation or disapproving the redesignation. This is particularly true since approval of the redesignation is not expected to result in an increase in ozone precursor emissions and is not expected to adversely affect air quality

in Canada. In fact, a decrease in both VOC and NO<sub>x</sub> emissions from the Toledo area is expected over the 10-year maintenance period. It should also be noted that redesignation does not allow States to automatically remove control programs which have contributed to an area's attainment of a U.S. National Ambient Air Quality Standard for any pollutant. As discussed previously, the USEPA's general policy is that a State may not relax the adopted and implemented SIP for an area upon the area's redesignation to attainment unless an appropriate demonstration,<sup>1</sup> based on computer modeling, is approved by the USEPA. In this case, no previously implemented control strategies are being relaxed as part of this redesignation.

(8) *Comment:* The maintenance demonstration overestimates reductions in VOC and NO<sub>x</sub> emissions, especially for the latter which relies heavily on NO<sub>x</sub> emission reductions obtained from modifications at the British Petroleum refinery and underestimated economic, population and VMT growth projections. VMT growth projections fail to consider the ensuing sprawl caused by the development of a corridor from northeast to southern Ohio. USEPA reliance on assurances from the State of Ohio that VOC and NO<sub>x</sub> emissions in the Toledo area will decrease 35 percent and 38 percent, respectively, from attainment levels by 2005, is speculative and suspect given continued urban growth and sprawl along major transportation corridors.

(8) *Response:* The methodology used to project emissions followed USEPA guidance. Point source emissions were projected by accounting for known changes to sources for each year between 1990 and 2005 and applying a growth factor based on manufacturing employment data provided by the Bureau of Economic Analysis, United States Department of Commerce, to derive inventories for all ensuing years. Manufacturing employment is expected to remain relatively constant. The NO<sub>x</sub> emission reductions which would result from compliance with Title IV NO<sub>x</sub> requirements are reasonable. Population

projections were obtained from using data from the Ohio Data Users Center (ODUC). ODUC takes into account past trends, the age of the population, economic cycles, and other factors in estimating the future population of the area. Ohio used the Highway Performance Modeling System which uses actual traffic counts to obtain 1990 levels of VMT. This model was developed by the Federal Highway Administration and is an acceptable model for estimating VMT. To project levels of VMT, Ohio used the Long Range Transportation Planning Program which considered the future transportation network. The methodology used to project mobile source emissions was reasonable and should not underpredict growth.

While the overall VMT are expected to increase, this growth will be offset by the FMVECP which will be providing emissions reductions in the area through the production of cleaner automobiles. In addition this area is still subject to the transportation conformity requirements and must show that the expected transportation projects in the area will conform to the ozone SIP for the area. This will help to ensure that growth in VMT will not increase emissions to a point where the ozone standard could be violated. In addition, Ohio has committed to submit an emissions inventory every three years to USEPA. If the total of point, area, and mobile VOC emissions exceed 95 percent of 1990 levels, Ohio has committed to implement either Stage II or I/M or both. Mobile source inventories will incorporate new VMT estimates.

(9) *Comment:* Ohio has not made the necessary commitments to ensure the prompt implementation and operation of the contingency plan in the event of a violation. It is unlikely that Stage II would be re-implemented given that the Director of the Ohio Environmental Protection Agency (OEPA) suspended Stage II on September 17, 1993.

(9) *Response:* The State provided a schedule in their contingency plan for implementing Stage II and an automobile inspection and maintenance program. This schedule was provided in the direct final rule published on May 2, 1995. The Director of the OEPA also committed in the SIP submittal to implementing the contingency plan for the area in the event of a violation in the area. As the compliance deadlines for Stage II begin as early as 6 months after a violation and I/M testing is to commence within 18 months of a violation, the contingency measures satisfy the statutory criteria section of section 175A.

(10) *Comment:* Ohio's failure to implement a part D New Source Review program for Toledo, Ohio cannot be excused by the memorandum from Mary Nichols entitled, "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment". The USEPA cannot waive statutory requirements of the Clean Air Act when such waivers frustrate the purpose of the Clean Air Act which is to provide clean air, not convenient loopholes for state responsibilities under the Clean Air Act.

(10) *Response:* The USEPA believes that its decision not to insist on a fully-approved NSR program as a pre-requisite to redesignation is justifiable as an exercise of the Agency's general authority to establish de minimis exceptions to statutory requirements. See *Alabama Power Co. v. Costle*, 636 F.2d 323, 360-61 (D.C. Cir. 1979). Under *Alabama Power Co. v. Costle*, the USEPA has the authority to establish de minimis exceptions to statutory requirements where the application of the statutory requirements would be of trivial or no value environmentally.

In this context, the issue presented is whether the USEPA has the authority to establish an exception to the requirements of section 107(d)(3)(E) that the USEPA have fully-approved a SIP meeting all of the requirements applicable to the area under section 110 and part D of title I of the Act. Plainly, the NSR provisions of section 110 and part D are requirements that were applicable to the Ohio area seeking redesignation at the time of the submission of the request for redesignation. Thus, on its face, section 107(d)(3)(E) would seem to require that the State have submitted and the USEPA have fully-approved a part D NSR program meeting the requirements of the Act before the areas could be redesignated to attainment.

Under the USEPA's de minimis authority, however, the Agency may establish an exception to an otherwise plain statutory requirement if its fulfillment would be of little or no environmental value. In this context, it is necessary to determine what would be achieved by insisting that there be a fully-approved part D NSR program in place prior to the redesignation of the Toledo area. For the following reasons, the USEPA believes that requiring the adoption and full-approval of a part D NSR program prior to redesignation would not be of significant environmental value in this case.

Ohio has demonstrated that maintenance of the ozone NAAQS will occur even if the emission reductions expected to result from the part D NSR

<sup>1</sup> Such a demonstration must show that removal of a control program will not interfere with maintenance of the ozone NAAQS and would entail submittal of an attainment modeling demonstration with the USEPA's current *Guideline on Air Quality Models*. Also, see memorandum from Gerald A. Emison, April 6, 1987, entitled *Ozone Redesignation Policy*, and memorandum from Michael H. Shapiro, September 17, 1993, entitled *State Implementation Plan (SIP) Requirements for Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992*.

program do not occur. Ohio assumed that NSR would not apply after redesignation to attainment, and therefore, assumed source growth factors based on projected growth in the economy and in the area's population. (It should be noted that the growth factors assumed may be overestimates under PSD, which would restrain source growth through the application of best available control techniques.) Thus, contrary to the assertion of the commentor, Ohio has demonstrated that there is no need to retain the part D NSR as an operative program in the SIP during the maintenance period in order to provide for continued maintenance of the NAAQS. (If this demonstration had not been made, NSR would have had to have been retained in the SIP as an operative program since it would have been needed to maintain the ozone standard.)

The other purpose that requiring the full-approval of a part D NSR program might serve would be to ensure that NSR would become a contingency provision in the maintenance plan required for these areas by section 107(d)(3)(E)(iv) and 175A(d). These provisions require that, for an area to be redesignated to attainment, it must receive full approval of a maintenance plan containing "such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area." Based on this language, it is apparent that whether an approved NSR program must be included as a contingency provision depends on whether it is a "measure" for the control of the pertinent air pollutants.

As the USEPA noted in the proposal regarding this redesignation request, the term "measure" is not defined in section 175A(d) and Congress utilized that term differently in different provisions of the Act with respect to the PSD and NSR permitting programs. For example, in section 110(a)(2)(A), Congress required that SIPs include "enforceable emission limitations and other control measures, means, or techniques \* \* \* as may be necessary or appropriate to meet the applicable requirements of the Act." In section 110(a)(2)(C), Congress required that SIPs include "a program to provide for the enforcement of the measures described

in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D." (Emphasis added.) If the term measures as used in section 110(a)(2) (A) and (C) had been intended to include PSD and NSR there would have been no point to requiring that SIPs include both measures and preconstruction review under parts C and D (PSD or NSR). Unless "measures" referred to something other than preconstruction review under parts C and D, the reference to preconstruction review programs in section 110(a)(2)(C) would be rendered mere surplusage. Thus, in section 110(a)(2) (A) and (C), it is apparent that Congress distinguished "measures" from preconstruction review. On the other hand, in other provisions of the Act, such as section 161, Congress appeared to include PSD within the scope of the term "measures."

The USEPA believes that the fact that Congress used the undefined term "measure" differently in different sections of the Act is germane to this issue. This indicates that the term is susceptible to more than one interpretation and that the USEPA has the discretion to interpret it in a reasonable manner in the context of section 175A. Inasmuch as Congress itself has used the term in a manner that excluded PSD and NSR from its scope, the USEPA believes it is reasonable to interpret "measure," as used in section 175A(d), not to include NSR. That this is a reasonable interpretation is further supported by the fact that PSD, a program that is the corollary of part D NSR for attainment areas, goes into effect in lieu of part D NSR.<sup>2</sup> This distinguishes NSR from other required programs under the Act, such as inspection and maintenance and Reasonably Available Control

<sup>2</sup>The U.S. EPA is not suggesting that NSR and PSD are equivalent, but merely that they are the same type of program. The PSD program is a requirement in attainment areas and designed to allow new source permitting, yet contains adequate provisions to protect the NAAQS. If any information including preconstruction monitoring, indicates that an area is not continuing to meet the NAAQS after redesignation to attainment, 40 CFR part 51 appendix S (Interpretive Offset Rule) or a 40 CFR 51.165(b) program would apply. The USEPA believes that in any area that is designated or redesignated as attainment under section 107, but experiences violations of the NAAQS, these provisions should be interpreted as requiring major new or modified sources to obtain VOC emission offsets of at least a 1:1 ratio, and as presuming that 1:1 NO<sub>x</sub> offsets are necessary. See October 14, 1994 memorandum from Mary Nichols entitled *Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment*.

Technology programs, which have no corollary for attainment areas. Moreover, the USEPA believes that those other required programs are clearly within the scope of the term "measure."

The USEPA's logic in treating part D NSR in this manner does not mean that other applicable part D requirements, including those that have been previously met and previously relied upon in demonstrating attainment, could be eliminated without an analysis demonstrating that maintenance would be protected. As noted above, Ohio has demonstrated that maintenance would be protected with PSD requirements in effect, rather than those of part D NSR. Thus, the USEPA is not permitting part D NSR to be removed without a demonstration that maintenance of the standard will be achieved. Moreover, the USEPA has not amended its policy with respect to the conversion of other SIP elements to contingency provisions, which provides that they may be converted to contingency provisions only upon a showing that maintenance will be achieved without them being in effect. Finally, as noted above, the USEPA believes that the NSR requirement differs from other requirements, and does not believe that the rationale for the NSR exception extends to other required programs.

The position taken in this action is consistent with the USEPA's current national policy. That policy permits redesignation to proceed without otherwise required NSR programs having been fully approved and converted to contingency provisions provided that the area demonstrates, as has been done in this case, that maintenance will be achieved with the application of PSD rather than part D NSR.

(11) *Comment:* Permitting Toledo, Ohio to defer adoption and implementation of I/M according to the revised USEPA I/M Program Requirements Rule published on January 5, 1995, at 60 FR 1735 frustrates meaningful control of vehicle emissions.

(11) *Response:* While the revised I/M rule (60 FR 1735) allows the I/M program to be placed in the contingency plan, there are still ongoing emission reductions in the area due to the FMVECP. The maintenance demonstration shows that the mobile source emissions are expected to decrease from 102,560 pounds of volatile organic compounds per day in 1996 to 57,412 pounds per day in 2005. The mobile source emissions of oxides of nitrogen are expected to decrease from 65,128 pounds per day in 1996 to 49,374 pounds per day in 2005. These

are significant reductions and are expected to ensure that the area maintains the ozone standard. Thus, deferral of the I/M program does not frustrate meaningful control of vehicle emissions.

(12) *Comment:* One commentator stated that Toledo illegally obtained a waiver from NO<sub>x</sub> conformity requirements under a section 182(f) submittal, and because of it NO<sub>x</sub> conformity requirements should be incorporated into Toledo's maintenance plan. The commentator notes that a NO<sub>x</sub> waiver for conformity purposes can only be issued under section 182(b)(1)(A). Also, not requiring Toledo, Ohio to submit general and transportation conformity SIP revisions with the redesignation request removes any incentive for Toledo, Ohio to adopt procedures for preventing emissions from transportation and federal construction projects contributing to ozone pollution levels. Another commentator stated that land use and transportation controls under the Clean Air Act will not be taken, resulting in increased pollution, if these requirements are changed.

(12) *Response:* Ohio is currently developing transportation and conformity SIP revisions. The USEPA expects to receive these submittals this summer. Maintenance areas are subject to the transportation and general conformity rules and therefore, must submit the SIP revisions required by these rules. The approval of these submissions was not required for the approval of the redesignation request because the redesignation request was submitted before the transportation and general conformity SIPs were due and were, therefore, not applicable requirements for purposes of evaluating this redesignation. Upon redesignation, the transportation conformity rule requires that a regional emission analyses of proposed transportation plans and programs for the Toledo area demonstrate that emissions from the future transportation system are below the motor vehicle emission budget established in the maintenance plan and lower than 1990 levels. The general conformity rule will also apply to the Toledo area after redesignation.

With respect to conformity, USEPA's conformity rules<sup>3,4</sup> currently provide a NO<sub>x</sub> waiver from certain requirements if

an area receives a section 182(f) exemption. Under the transportation conformity rule, a NO<sub>x</sub> waiver relieves an area only of the requirement to meet the "build/no build" and "less-than-1990-baseline" tests. In a notice published in the June 17, 1994 **Federal Register** (59 FR 31238, 31241), entitled "Conformity; General Preamble for Exemption From Nitrogen Oxides Provisions," USEPA reiterated its view that in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and transportation improvement program (TIP) are consistent with the motor vehicle emissions budget for NO<sub>x</sub> even where a conformity NO<sub>x</sub> waiver has been granted. Due to a drafting error, that view is not reflected in the current published transportation conformity rules. USEPA is in the process of amending the conformity rule to remedy the problem.

An issue concerning the appropriate Act authority for granting transportation-related NO<sub>x</sub> waivers has been raised by several commentators. NO<sub>x</sub> exemptions are provided for in two separate parts of the Act, section 182(b)(1) and section 182(f). These commentators argue that exemptions from the NO<sub>x</sub> transportation conformity requirements must follow the process provided in section 182(b)(1), since this is the only section explicitly referenced by section 176(c)(3)(A)(iii) in the Act's transportation conformity provisions.

With certain exceptions, USEPA agrees that section 182(b)(1) is the appropriate authority under the Act for waiving the transportation conformity rule's NO<sub>x</sub> "build/no build" and "less-than-1990" tests, and is planning to amend the rule to be consistent with the statute. However, USEPA believes that this authority is only applicable with respect to those areas that are subject to section 182(b)(1).

The change in authority for granting NO<sub>x</sub> waivers from section 182(f) to section 182(b)(1) has different impacts for areas subject to section 182(b)(1) depending on whether the area is relying on "clean air" data or on modeling data. Areas relying on modeling data must meet the procedure established under section 182(b)(1), including submitting the exemption request as part of a SIP revision. The USEPA may not take action on exemptions for such areas until the rulemaking amending the transportation conformity rule to establish section 182(b)(1) as the appropriate authority for granting such relief has been completed. "Clean data" areas that would otherwise be subject to section 182(b)(1), such as Cincinnati and

Cleveland, will be relieved of the transportation conformity rule's interim period NO<sub>x</sub> requirements at such time as USEPA takes final action implementing its recently-issued policy regarding the applicability of section 182(b)(1) requirements for areas demonstrating attainment of the ozone NAAQS based on "clean data". This policy is contained in a May 10, 1995, memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," which should be referred to for a more thorough discussion. The aspect of the policy that is relevant here is USEPA's determination that the section 182(b)(1) provisions regarding reasonable further progress (RFP) and attainment demonstrations may be interpreted so as not to require the SIP submissions otherwise called for in section 182(b)(1) if an ozone nonattainment area that would otherwise be subject to those requirements is in fact attaining the ozone standard (i.e., attainment of the NAAQS is demonstrated with 3 consecutive years of complete, quality-assured, air-quality monitoring data). Any such "clean data" areas, under this interpretation, would no longer be subject to the requirements of section 182(b)(1) once USEPA takes final rulemaking action adopting the interpretation in conjunction with its determination that the area has attained the standard. At that time, such areas would be treated like ozone nonattainment areas classified marginal and below, and hence eligible for NO<sub>x</sub> waivers from the interim-period transportation conformity requirements by obtaining a waiver under section 182(f), as described below.

Marginal and below ozone nonattainment areas (which represents the majority of the areas USEPA is taking action on today) are not subject to section 176(c)(3)(A)(iii) because they are not subject to section 182(b)(1), and general federal actions are also not subject to section 176(c)(3)(A)(iii) (and, hence, are not subject to section 182(b)(1) either). These areas, however, are still subject to the conformity requirements of section 176(c)(1), which sets out criteria that, if met, will assure consistency with the SIP. The USEPA believes it is reasonable and consistent with the Act to provide relief under section 176(c)(1) for areas not subject to section 182(b)(1) from applicable NO<sub>x</sub> conformity requirements where the

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

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

Agency has determined that NO<sub>x</sub> reductions would not be beneficial, and to rely, in doing so, on the NO<sub>x</sub> exemption tests provided in section 182(f) for the reasons given below.

The basic approach of the Act is that NO<sub>x</sub> reductions should apply when beneficial to an area's attainment goals, and should not apply when unhelpful or counterproductive. Section 182(f) reflects this approach but also includes specific substantive tests which provide a basis for USEPA to determine when NO<sub>x</sub> requirements should not apply. Whether under section 182(b)(1) or section 182(f), where USEPA has determined that NO<sub>x</sub> reductions will not benefit attainment or would be counterproductive in an area, USEPA believes it would be unreasonable to insist on NO<sub>x</sub> reductions for purposes of meeting RFP or other milestone requirements. Moreover, there is no substantive difference between the technical analysis required to make an assessment of NO<sub>x</sub> impacts on attainment in a particular area whether undertaken with respect to mobile source or stationary source NO<sub>x</sub> emissions. Consequently, USEPA believes that granting relief from the NO<sub>x</sub> conformity requirements of section 176(c)(1) under section 182(f) in these cases is appropriate.

### III. Final Rulemaking Action

The USEPA approves the redesignation of the Toledo, Ohio ozone area to attainment and the section 175A maintenance plan as a revision to the Ohio SIP. The State of Ohio has satisfied all of the necessary requirements of the Act.

USEPA finds that there is good cause for this redesignation to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which exempts the area from certain Clean Air Act requirements that would otherwise apply to it. The immediate effective date for this redesignation is authorized under both 5 U.S.C 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction" and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

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

The SIP approvals under section 100 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976).

Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 2, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the state implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments being proposed for approval in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being proposed for approval by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

#### List of Subjects

##### 40 CFR Part 52

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

##### 40 CFR Part 81

Air pollution control, Environmental protection, National parks, and Wilderness areas.

Dated: July 5, 1995.  
**David A. Ullrich,**  
*Acting Regional Administrator.*

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

**PART 52—[AMENDED]**

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

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

2. Section 52.1870 is amended by adding a new paragraph (c)(105) to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(105) On September 17, 1993, the Ohio Environmental Protection Agency requested the redesignation of Lucas and Wood Counties to attainment of the

National Ambient Air Quality Standard for ozone. To meet the redesignation criteria set forth by section 107(d)(3)(E) (iii) and (iv), Ohio credited emissions reductions from the enclosure of the "oily ditch" at the British Petroleum Refinery in Oregon, Ohio. The USEPA is approving the Director's Finding and Order which requires the enclosure of the "oily ditch" into the SIP for Lucas and Wood Counties.

(i) Incorporation by reference.  
 (A) letter dated June 2, 1994, from Donald R. Schregardus, Director, Ohio Environmental Protection Agency, to Valdas Adamkus, Regional Administrator, USEPA, Region 5, and one enclosure which is the revised Director's Final Findings and Orders in the matter of BP Oil company, Toledo Refinery, 4001 Cedar Point Road, Oregon, Ohio, Fugitive Emissions from the Refinery Waste Water System "Oily Ditch", effective June 2, 1994.

3. Section 52.1885 is amended by adding paragraph (b)(5) to read as follows:

**§ 52.1885 Control Strategy: Ozone.**

\* \* \* \* \*

(b) \* \* \*

(5) Lucas and Wood Counties.

\* \* \* \* \*

**PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

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

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

2. Section 81.336 is amended by revising the entry in the ozone table for Toledo to read as follows:

**§ 81.336 Ohio.**

\* \* \* \* \*

OHIO—OZONE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
*	*	*	*	*
Toledo area:				
Lucas County .....	August 1, 1995 .....	Attainment.		
Wood County .....	August 1, 1995 .....	Attainment.		
*	*	*	*	*

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95-18510 Filed 7-31-95; 8:45 am]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration  
 42 CFR Parts 409 and 484**

[BPD-469-CN]

RIN 0938-AD78

**Medicare Program; Medicare Coverage of Home Health Services, Medicare Conditions of Participation, and Home Health Aide Supervision; Correction**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects several errors made in a final rule published on December 20, 1994 (59 FR 65482) concerning Medicare coverage of home health services, Medicare

conditions of participation, and home health aide supervision.  
**EFFECTIVE DATE:** February 21, 1995.  
**FOR FURTHER INFORMATION CONTACT:** Julie Brown, (410) 966-4669.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 20, 1994, we published a final rule concerning Medicare coverage of home health services, Medicare conditions of participation, and home health aide supervision. (59 FR 65482) In it were a number of technical errors:

When revising our regulations at 42 CFR 409.42(d) (redesignated as § 409.42(b)), we inadvertently revised obsolete regulations text.

When adding § 409.45, we overlooked the statutory name change in section 1861(b)(6) of the Social Security Act as amended by section 4039(b)(2) of the Omnibus Budget Reconciliation Act of 1987.

When adding § 484.36(d)(4)(iii), we overlooked the training requirements in § 484.36(b). However, we proposed the

addition of paragraph (d)(4) in order to identify the responsibilities of an HHA or hospice that furnishes services under arrangement, including "ensuring that the aides have met the training requirements." (56 FR 49157) Section 484.36(b) contains training requirements.

There were also a number of incorrect crossreferences.

**Correction of Publication**

Accordingly, the publication on December 20, 1994, of the final regulation, which was the subject of FR Doc. 94-31062, is corrected as follows:

**§ 409.42 [Corrected]**

Page 65494, column 1: In § 409.42(b), line 6, the words "with the HHA's policy and" are removed.

Page 65494, column 1: In § 409.42(c)(2), (c)(3), and (c)(4), the phrase "§ 409.44(b)" is revised to read "§ 409.44(c)".

**§ 409.45 [Corrected]**

Page 65495, column 2: In § 409.45(a), the phrases "§ 409.44(a)" and

"§ 409.44(b)" in lines 6 and 8, respectively, are revised to read "§ 409.44(b)" and "§ 409.44(c)", respectively.

Page 65496, column 2: In § 409.45(g)(4), lines 3 through 5, the words "Council on Podiatry Education of the American Podiatric Association" are revised to read "Council on Podiatric Medical Education of the American Podiatric Medical Association."

**§ 409.49 [Corrected]**

Page 65497, column 3: In § 409.49(f), line 2, the phrase "§ 410.36(b)" is revised to read "§ 410.36(a)(2)".

**§ 484.36 [Corrected]**

Page 65498, column 3: In § 484.36(d)(4)(iii), line 4, the phrase "paragraph (a)" is revised to read "paragraphs (a) and (b)".

Dated: July 21, 1995.

**Neil J. Stillman,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 95-18771 Filed 7-31-95; 8:45 am]

BILLING CODE 4120-01-P

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**

**44 CFR Part 64**

[Docket No. FEMA-7622]

**Suspension of Community Eligibility**

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATE:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., Room 417, Washington, DC 20472, (202) 646-3619.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the

communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

**PART 64—[AMENDED]**

**Authority:** 42 U.S.C. 4001 *et seq.*;  
Reorganization Plan No. 3 of 1978, 3 CFR,  
1978 Comp., p. 329; E.O. 12127, 44 FR 19367,  
3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

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

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
<b>Region V</b>				
Indiana:				
Connersville, city of, Fayette County ..	180061	April 11, 1975, Emerg.; August 1, 1995, Reg.; August 1, 1995, Susp.	August 1, 1995 .....	August 1, 1995.
Delphi, city of, Carroll County .....	180020	July 25, 1975, Emerg.; August 1, 1995, Reg.; August 1, 1995, Susp.	.....do .....	Do.
<b>Region II</b>				
New York: Ellicottville, town of, Cattaraugus County.	360069	May 28, 1975, Emerg.; May 15, 1978, Reg.; August 2, 1995, Susp.	August 2, 1995 .....	August 2, 1995.
<b>Region V</b>				
Indiana:				
Fort Wayne, city of, Allen County .....	180003	May 24, 1974, Emerg.; April 3, 1985, Reg.; August 2, 1995, Susp.	.....do .....	Do.
New Haven, city of, Allen County .....	180004	January 30, 1975, Emerg.; July 18, 1983, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Monroe County, unincorporated areas	180444	June 18, 1985, Emerg.; April 1, 1984, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Ohio:				
Bexley, city of, Franklin County .....	390168	November 21, 1973, Emerg.; November 15, 1978, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Columbus, city of, Franklin County ....	390170	May 21, 1971, Emerg.; July 5, 1983, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Franklin County, unincorporated areas.	390167	April 19, 1973, Emerg.; July 5, 1983, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Gahanna, city of, Franklin County .....	390171	May 17, 1973, Emerg.; August 1, 1983, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Glenford, village of, Perry County .....	390442	August 11, 1978, Emerg.; August 2, 1995, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Grandview Heights, city of, Franklin County.	390172	June 6, 1975, Emerg.; August 15, 1980, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Grove City, city of, Franklin County ...	390173	October 15, 1974, Emerg.; May 1, 1984, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Grove City, city of, Franklin County ...	390174	November 7, 1974, Emerg.; September 1, 1983, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Obetz, city of, Franklin County .....	390176	March 23, 1978, Emerg.; January 16, 1981, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Whitehall, city of, Franklin County .....	390180	October 7, 1974, Emerg.; July 18, 1985, Reg.; August 2, 1995, Susp.	.....do .....	Do.
<b>Region VI</b>				
Arkansas: Weiner, city of, Poinsett County	050373	October 31, 1975, Emerg.; September 28, 1982, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Oklahoma: Blaine County, unincorporated areas.	400011	May 28, 1993, Emerg.; August 2, 1995, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Texas:				
Arlington, city of, Tarrant County .....	485454	July 31, 1970, Emerg.; December 30, 1970, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Bedford, city of, Tarrant County .....	480585	January 19, 1973, Emerg.; July 18, 1977, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Benbrook, city of, Tarrant County .....	480586	November 2, 1973, Emerg.; July 2, 1979, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Blue Mound, city of, Tarrant County ..	480587	July 3, 1975, Emerg.; July 16, 1980, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Burleson, city of, Tarrant County .....	485459	December 17, 1971, Emerg.; November 2, 1973, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Colleyville, city of, Tarrant County .....	480590	January 29, 1975, Emerg.; December 1, 1982, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Crowley, city of, Tarrant County .....	480591	February 20, 1975, Emerg.; April 15, 1981, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Dalworthington Gardens, city of, Tarrant County.	481013	July 21, 1977, Emerg.; May 17, 1982, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Edgecliff Village, town of, Tarrant County.	480592	June 5, 1975, Emerg.; August 19, 1986, Reg.; August 2, 1995, Susp.	.....do .....	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Eules, city of, Tarrant County .....	480593	August 20, 1974, Emerg.; April 3, 1985, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Everman, city of, Tarrant County .....	480594	July 1, 1975, Emerg.; September 17, 1980, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Forest Hill, city of, Tarrant County .....	480595	February 19, 1974, Emerg.; August 1, 1978, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Haltom City, city of, Tarrant County ...	480599	January 14, 1972, Emerg.; February 1, 1978, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Haslet, city of, Tarrant County .....	480600	December 18, 1981, Emerg.; October 15, 1985, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Hurst, city of, Tarrant County .....	480601	February 11, 1972, Emerg.; October 15, 1985, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Lakeside, city of, Tarrant County .....	480604	January 19, 1973, Emerg.; August 3, 1984, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Mansfield, city of, Tarrant County .....	480606	February 28, 1975, Emerg.; December 18, 1985, Reg.; August 2, 1995, Susp.	.....do .....	Do.
North Richland Hills, city of, Tarrant County.	480607	March 31, 1972, Emerg., April 1, 1981 Reg., August 2, 1995, Susp.	.....do .....	Do.
Southlake, city of, Tarrant County .....	480612	September 30, 1974, Emerg., July 5, 1982, Reg., August 2, 1995 Susp.	.....do .....	Do.
Westover, town of, Tarrant County ....	480615	July 2, 1975, Emerg., June 5, 1985, Reg., August 2, 1995, Susp.	.....do .....	Do.
Westworth Village, city of Tarrant County.	480616	January 24, 1975, Emerg., June 3, 1986, Reg., August 2, 1995, Susp.	.....do .....	Do.
<b>Region VII</b>				
Missouri:				
Ballwin, city of, St. Louis County .....	290328	July 8, 1975, Emerg., January 2, 1981, Reg., August 2, 1995, Susp.	.....do .....	Do.
Bella Villa, city of, St. Louis County ...	290329	June 18, 1975, Emerg., July 16, 1979 Reg., August 2, 1995, Susp.	.....do .....	Do.
Bellefontaine Neighbors, city of, St. Louis County.	290330	December 10, 1973, Emerg., September 29, 1978, Reg., August 2, 1995, Susp.	.....do .....	Do.
Black Jack, city of, St. Louis County ..	290336	July 2, 1974, Emerg., January 2, 1981, Reg., August 2, 1995, Susp.	.....do .....	Do.
Chesterfield, city of, St. Louis County	290896	September 3, 1971, Emerg., September 15, 1978, Reg., August 2, 1995, Susp.	.....do .....	Do.
Clarkson Valley, City of, St. Louis County.	290340	May 27, 1975, Emerg., April 8, 1977, Reg., August 2, 1995, Susp.	.....do .....	Do.
Creve Coeur, city of, St. Louis County	290344	March 27, 1974, Emerg., August 1, 1978, Reg., August 2, 1995, Susp.	.....do .....	Do.
Ellisville, city of, St. Louis County .....	290348	February 5, 1975, Emerg., September 9, 1980, Reg., August 2, 1995, Susp.	.....do .....	Do.
Eureka, city of, St. Louis County .....	290349	January 23, 1974, Emerg., July 5, 1977, Reg., August 2, 1995, Susp.	.....do .....	Do.
Hazelwood, city of, St. Louis County .	290357	November 27, 1973, Emerg., April 1, 1980, Reg., August 2, 1995, Susp.	.....do .....	Do.
Maplewood, city of, St. Louis County .	295266	May 21, 1971, Emerg., November 23, 1973, Reg., August 2, 1995, Susp.	.....do .....	Do.
Maryland Heights, city of, St. Louis County.	290889	April 4, 1986, Emerg., September 30, 1988, Reg., August 2, 1995, Susp.	.....do .....	Do.
Moline Acres, city of, St. Louis County.	290370	September 17, 1974, Emerg., May 19, 1981, Reg., August 2, 1995, Susp.	.....do .....	Do.
Northwoods, city of St. Louis County .	290372	April 12, 1974, Emerg., December 2, 1980, Reg., August 2, 1995, Susp.	.....do .....	Do.
Norwood Court, village of, St. Louis County.	290867	August 14, 1978, Emerg.; March 18, 1980, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Oakland, city of, St. Louis County .....	290373	June 5, 1975, Emerg.; January 16, 1981, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Pemiscot County, unincorporated areas.	290779	April 8, 1975, Emerg.; May 17, 1982, Reg.; August 2, 1995, Susp.	.....do .....	Do.
St. John, city of, St. Louis County .....	290384	May 9, 1975, Emerg.; April 15, 1977, Reg.; August 2, 1995, Susp.	.....do .....	Do.
St. Louis County, unincorporated areas.	290327	September 3, 1971, Emerg.; September 15, 1978, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Sunset Hills, city of, St. Louis County	290387	June 28, 1973, Emerg.; September 1, 1977, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Velda Village Hills, village of, St. Louis County.	290857	November 10, 1989, Emerg.; May 1, 1990, Reg.; August 2, 1995, Susp.	.....do .....	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Webster Groves, city of, St. Louis County.	290394	January 23, 1974, Emerg.; September 29, 1978, Reg.; August 2, 1995, Susp.	.....do .....	Do.
Winchester, city of, St. Louis County .	290397	June 18, 1975, Emerg.; September 30, 1976, Reg.; August 2, 1995, Susp.	.....do .....	Do.
<b>Region X</b>				
Washington: Okanogan, city of, Okanogan County.	530119	March 6, 1974, Emerg.; September 30, 1977, Reg.; August 2, 1995, Susp.	.....do .....	Do.
<b>Region II</b>				
New York:				
Ballston Spa, village of, Saratoga County.	360710	July 7, 1975, Emerg.; June 1, 1984, Reg.; August 16, 1995, Susp.	August 16, 1995 .....	August 16, 1995.
Charlton, town of, Saratoga County ...	360712	July 24, 1975, Emerg.; July 18, 1985, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Corinth, town of, Saratoga County .....	360715	August 6, 1975, Emerg.; March 1, 1984, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Corinth, village of, Saratoga County ..	360714	April 28, 1975, Emerg.; March 1, 1984, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Mechanicville, city of, Saratoga County.	360721	July 1, 1975, Emerg.; January 5, 1984, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Milton, town of, Saratoga County .....	360722	June 26, 1975, Emerg.; May 15, 1985, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Moreau, town of, Saratoga County ....	360723	August 11, 1975, Emerg.; June 15, 1984, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Providence, town of, Saratoga County	361190	October 5, 1984, Emerg.; December 2, 1985, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Round Lake, village of, Saratoga County.	360726	July 29, 1975, Emerg.; January 5, 1984, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Schuylerville, village of, Saratoga County.	360729	July 2, 1975, Emerg.; June 1, 1984, Reg.; August 16, 1995, Susp.	.....do .....	Do.
South Glens Falls, village of, Saratoga County.	360730	September 23, 1975, Emerg.; June 5, 1985, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Stillwater, town of, Saratoga County ..	360731	July 9, 1975, Emerg.; June 1, 1984, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Stillwater, village of, Saratoga County	360732	June 24, 1975, Emerg.; January 5, 1984, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Waterford, town of, Saratoga County .	360734	July 26, 1974, Emerg.; December 4, 1979, Reg.; August 16, 1995, Susp.	.....do .....	Do.
<b>Region VI</b>				
Texas:				
Guadalupe County, unincorporated areas.	480266	September 22, 1972, Emerg.; March 1, 1979, Reg.; August 16, 1995, Susp.	.....do .....	Do.
LaVernia, city of, Wilson County .....	481050	March 9, 1977, Emerg.; May 1, 1978, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Wilson County, unincorporated area ..	480230	January 10, 1974, Emerg.; March 15, 1978, Reg.; August 16, 1995, Susp.	.....do .....	Do.
<b>Region VII</b>				
Missouri: Columbia, city of, Boone County	290036	August 27, 1971, Emerg.; August 27, 1971, Reg.; August 16, 1995, Susp.	.....do .....	Do.
<b>Region VIII</b>				
Colorado:				
Adams County, unincorporated areas	080001	January 14, 1972, Emerg.; February 1, 1979, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Arapahoe County, unincorporated areas.	080011	February 4, 1972, Emerg.; August 15, 1977, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Aurora, city of, Adams and Araphoe Counties.	080002	August 20, 1971, Emerg.; June 1, 1978, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Brighton, city of, Adams County .....	080004	August 2, 1974, Emerg.; November 16, 1977, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Englewood, city of, Arapahoe County	085074	February 26, 1971, Emerg.; February 11, 1972, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Federal Heights, city of, Adams County.	080240	July 28, 1976, Emerg.; April 15, 1986, Reg.; August 16, 1995, Susp.	.....do .....	Do.
Greenwood Village, city of, Araphoe County.	080195	March 16, 1976, Emerg.; January 5, 1978, Reg.; August 17, 1994, Susp.	.....do .....	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Sheridan, city of, Arapahoe County ...	080018	February 4, 1972, Emerg.; July 13, 1976, Reg.; August 16, 1995, Susp.	.....do .....	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: July 24, 1995.

**Frank H. Thomas,**

*Deputy Associate Director, Mitigation Directorate.*

[FR Doc. 95-18722 Filed 7-31-95; 8:45 am]

BILLING CODE 6718-21-P

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

Radio Broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

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

[FR Doc. 95-18799 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-F

**FOR FURTHER INFORMATION CONTACT:**

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92-244, adopted July 14, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

At their request, the counterproposal jointly filed by El Mundo Broadcasting Corporation, Estereotempo, Inc., Radio Redentor, Inc. and Aurio Matos, is dismissed (RM-8183). With this action, this proceeding is terminated.

**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:** Sections 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 Virgin Islands, is amended by removing Channel 222B and adding Channel 267B at Cruz Bay. Federal Communications Commission.

**Andrew J. Rhodes,**

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

[FR Doc. 95-18797 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-F

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[MM Docket No. 92-200; RM-8018]

**Radio Broadcasting Services; Bronson and Cross City, FL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document denies the reallocation of Channel 295C1 from Cross City, Florida, to Bronson, Florida, as requested by Women in Florida Broadcasting, Inc. See 57 FR 42537, September 15, 1992. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 1, 1995.

**FOR FURTHER INFORMATION CONTACT:**

Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92-200, adopted July 18, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

**47 CFR Part 73**

[MM Docket No. 92-244; RM-8027, RM-8182, RM-8183]

**Radio Broadcasting Services; Charlotte Amalie, Cruz Bay, Frederiksted, Christiansted, VI, and Aguada, Gurabo, Utuado, San Juan, Ponce and Carolina, PR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Paradise Broadcasting Corporation, substitutes Channel 267B for Channel 222B at Cruz Bay, Virgin Islands, and modifies Station WDCM(FM)'s construction permit accordingly (RM-8182). Additionally, the mutually exclusive proposal of Robert E. Miller, Jonathan Cohen and Arthur V. Belendiuk, d/b/a Calypso Communications, proposing the substitution of Channel 267B for Channel 246B at Charlotte Amalie, Virgin Islands, is denied (RM-8027). See 57 FR 58769, December 11, 1992. Channel 267B can be allotted at Cruz Bay in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.0 kilometers (11.8 miles) west. The coordinates for Channel 267B at Cruz Bay are North Latitude 18-21-31 and West Longitude 64-58-21. See Supplementary Information, *infra*.

**EFFECTIVE DATE:** September 11, 1995.

# Proposed Rules

Federal Register

Vol. 60, No. 147

Tuesday, August 1, 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 COMMERCE

### Bureau of Economic Analysis

#### 15 CFR Part 806

[Docket No. 950710175-5175-01]

RIN 0691-AA25

#### Direct Investment Surveys; Change in Reporting Requirements for the Annual Survey of U.S. Direct Investment Abroad (BE-11)

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** These proposed rules will amend 15 CFR 806.14 to revise the reporting requirements for the BE-11, Annual Survey of U.S. Direct Investment Abroad. The BE-11 is mandatory survey of U.S. direct investment abroad conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The proposed rules will:

(1) Raise the overall exemption level for the survey, and the exemption level for reporting individual nonbank foreign affiliates on Forms BE-11B(LF) and BE-11C, from \$15 million to \$20 million.

(2) Institute a short form, Form BE-11B(SF), for U.S. companies to report their majority-owned nonbank foreign affiliates with assets, sales, and net income in the \$20 to \$50 million range.

(3) For fiscal year 1997 only, require the largest nonbank foreign affiliates owned between 10 and 20 percent to be reported on Form BE-11C, along with affiliates owned between 20 and 50 percent. In all years, nonbank foreign affiliates owned between 20 and 50 percent by all U.S. Reporters (U.S. parent companies) of the affiliate combined must be reported on Form BE-11C if their assets, sales, or net income exceed \$20 million. For fiscal year 1997 only, Form BE-11C must also be filed for nonbank foreign affiliates owned, directly and/or indirectly, at least 10 percent by one U.S. Reporter (i.e., U.S. parent company), but less than

20 percent by all U.S. Reporters of the affiliate combined, if the affiliate's total assets, sales, or net income exceed \$100 million. Reporting for the largest affiliates owned between 10 and 20 percent is needed in at least one year between benchmark surveys, in order to maintain reliable estimates of data for the universe of foreign affiliates (which is defined by law to include all foreign business enterprises owned 10 percent or more by a U.S. person). A similar requirement was imposed in the 1987 and 1992 annual surveys, which fell between earlier benchmark surveys.

Raising the overall exemption level will reduce the number of U.S. parent companies and foreign affiliates that must be reported in the survey, and instituting a short form for smaller majority-owned affiliates will reduce the number of items to be reported for those affiliates. Thus, the proposed changes will reduce both the reporting and processing burdens of the survey. (As noted below, however, BEA is proposing to add several items to the survey forms, which does not require a rule change; the addition of the items will increase the reporting burden, partially offsetting the reduction in burden due to raising the exemption level and instituting the short form).

**DATES:** Comments on these proposed rules will receive consideration if submitted in writing on or before September 15, 1995.

**ADDRESSES:** Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Shipping and Receiving, Section M-100, 1441 L Street, NW., Washington, DC 20005. Comments received will be available for public inspection in Room 7006, 1441 L Street NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-9800.

**SUPPLEMENTARY INFORMATION:** The BE-11, Annual Survey of U.S. Direct Investment Abroad, is part of BEA's regular data collection program for U.S. direct investment abroad. The survey is mandatory and is conducted pursuant to the International Investment and Trade

in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended).

The BE-11 survey consists of an instruction booklet, a claim for not filing the BE-11, and the following report forms:

1. Form BE-11A for reporting by a U.S. Reporter that is not a bank;

2. Form BE-11B(LF) (Long Form) for reporting majority-owned nonbank foreign affiliates with assets, sales, or net income greater than \$50 million (positive or negative);

3. Form BE-11B(SF) (Short Form) for reporting majority-owned nonbank foreign affiliates with assets, sales, or net income greater than \$20 million, but not greater than \$50 million (positive or negative); and

4. Form BE-11C for reporting minority-owned nonbank foreign affiliates.

A. Form BE-11A must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE-11B(LF), BE-11B(SF), or BE-11C. Under these proposed rules, the exemption level for reporting individual foreign affiliates on Form BE-11B(LF) or (SF) or BE-11C—and, thus, for determining whether a U.S. person has to file Form BE-11A—would be raised from \$15 million to \$20 million. The exemption level is the level of a foreign affiliate's assets, sales, or net income below which a Form BE-11B(LF) or (SF) or BE-11C is not required. Raising the exemption level lowers the number of reports that otherwise must be filed, thus reducing the reporting and processing burdens. The proposed exemption level of \$20 million is the same as that recently approved for the related quarterly Form BE-577, Direct Transactions of U.S. Reporter With Foreign Affiliate. The exemption level for the BE-11 survey was last raised following the 1989 benchmark survey and was effective with the annual survey covering the year 1990.

In addition to raising the exemption level, these proposed rules will institute the BE-11B(SF) short form. Majority-owned nonbank foreign affiliates for which assets, sales, or net income is greater than \$20 million (positive or negative), but for which no one of these items is greater than \$50 million (positive or negative), will be required to be reported on Form BE-11B(SF). The use of a short form means that, for about

3,700 foreign affiliates, U.S. companies will now report significantly fewer data items than on the last (1993) annual survey.

For fiscal year 1997 only, these proposed rules will require the largest nonbank foreign affiliates owned between 10 and 20 percent to be reported on Form BE-11C, along with affiliates owned between 20 and 50 percent. In all years, reporting on Form BE-11C is required if an affiliate is owned between 20 and 50 percent by all U.S. Reporters combined and if its assets, sales, or net income exceed \$20 million. Primarily to reduce reporting burden of the survey, affiliates owned less than 20 percent do not have to be reported. However, U.S. direct investment abroad is defined by law to include all foreign business enterprises owned 10 (not 20) percent or more, directly or indirectly, by a U.S. person. BEA conducts periodic benchmark surveys of U.S. direct investment abroad (the BE-10), covering all foreign affiliates owned 10 percent or more. A benchmark survey for the year 1994 is now being conducted; the next survey will cover the year 1999. In order to maintain reliable estimates of data for the universe of all foreign affiliates in nonbenchmark years, reporting for the largest affiliates owned between 10 and 20 percent is needed for at least one year between benchmark surveys. Although the U.S. ownership percentages in these affiliates are low, some of the affiliates are very large and have a sizable impact on the estimates. Under these proposed rules, reporting of Form BE-11(C) for nonbank foreign affiliates owned directly and/or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which assets, sales, or net income exceed \$100 million would be required for fiscal year 1997 only. A similar one-year requirement was imposed in the 1987 annual survey (between the 1982 and 1989 benchmark surveys) and in the 1992 annual survey (between the 1989 and 1994 benchmark surveys).

These new rules, if approved, will be effective with the survey covering fiscal year 1995. The 1995 forms will be mailed out in March 1996 and will be due May 31, 1996. The last BE-11 survey covered the year 1993. (A BE-11 survey is not conducted in a year, such as 1994, when a BE-10 benchmark survey is conducted.)

BEA is proposing a number of other changes to the report forms themselves—such as modifications, additions, and deletions. These changes, however, do not require rule changes

and are not reflected in these proposed rules. The major changes are the addition of five items on Form BE-11A to facilitate the estimation of U.S. parent companies' gross product in the United States annually; the addition of three items on Form BE-11B(LF) to collect affiliates' equity investment in other foreign affiliates needed to arrive at the correct values for affiliates' income and owners' equity; and the addition of an item on Form BE-11B(LF) (which is also included on new Form BE-11B(SF)) to collect property, plant, and equipment (PP&E) expenditures. Projected and actual expenditures for PP&E had been collected on the BE-133 B and C surveys, which were discontinued in June 1993. At that time, respondents were informed that an item on actual expenditures would be added to the annual survey. All the items being added are currently only available on benchmark surveys.

Other changes to the survey include the collection of "total sales," rather than "sales of services," by transactor on Form BE-11A; the collection of research and development expenditures on a performed "by" basis (the basis used by the National Science Foundation), rather than a performed "for" basis, on Form BE-11A and Forms BE-11B (LF) and (SF); the addition of an item on Forms BE-11B (LF) and (SF) to obtain information on an indirectly-owned foreign affiliate's foreign parent's identify and ownership interest in its subsidiary; and the replacement on Form BE-11C of one item, on U.S. ownership in the affiliate, with two items—one on direct ownership interest and the other on indirect ownership interest.

The reporting burden for the 1995 BE-11 (OMB Control No. 0608-0053) survey is estimated at 88,940 hours, 16,360 less than the estimate currently in the OMB inventory. The reduction in burden is more than accounted for by raising the exemption level from \$15 million to \$20 million and by instituting the BE-11B short form, partly offset by natural growth in the universe and the addition of new items.

A copy of the proposed survey forms may be obtained from: Office of the Chief, Direct Investment Abroad Branch, International Investment Division (BE-69(A)), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606-5566.

#### **Executive Order 12612**

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a

Federalism assessment under E.O. 12612.

#### **Executive Order 12866**

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

#### **Paperwork Reduction Act**

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act. A request for review of the forms has been submitted to the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act.

The public reporting burden for a U.S. company for this collection of information can range from 4 hours for the smallest and least complex U.S. Reporter that has one affiliate, to approximately 3,000 hours for a large U.S. Reporter that has up to 150 affiliates with a wide range of activities; the average burden per Reporter is 62 hours. The estimated burden includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments from the public regarding the burden estimate or any other aspect of this collection of information should be addressed to: Acting Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce. (OMB Control No. 0608-0053).

#### **Regulatory Flexibility Act**

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities. The exemption level is set in terms of the size of a U.S. company's foreign affiliates. Only if the affiliate's assets, sales, or net income exceeds \$20 million must it be reported. Usually, the U.S. parent company (the one required to file the report) is many times larger.

In addition, by raising the exemption level from \$15 million to \$20 million, U.S. parent companies will no longer have to report for affiliates between \$15 and \$20 million. This change should reduce the reporting burden on smaller U.S. businesses that own these affiliates.

Also, to minimize the reporting burden on smaller U.S. businesses, majority-owned affiliates with assets, sales, and net income in the range of \$20 million to \$50 million will be reported on the abbreviated BE-11B(SF), or short form, rather than the BE-11B(LF), or long form.

#### List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, U.S. investment abroad, Penalties, Reporting and recordkeeping requirements.

Dated: June 30, 1995.

#### J. Steven Landefeld,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

#### PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

**Authority:** 5 U.S.C. 301; 22 U.S.C. 3101-3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

#### § 806.14 [Amended]

2. Section 806.14(f)(3) introductory text, (f)(3)(i), (f)(3)(ii), (f)(3)(iii), (f)(3)(iv)(A) through (C), (f)(3)(v) are revised to read as follows:

\* \* \* \* \*

(f) \* \* \*

(3) BE-11—Annual Survey of U.S. Direct Investment Abroad: A report, consisting of Form BE-11A and Form(s) BE-11B(LF), BE-11B(SF), and/or BE-11C, is required of each nonbank U.S. Reporter who, at the end of the Reporter's fiscal year, had a nonbank foreign affiliate reportable on Form BE-11B(LF), BE-11B(SF), or BE-11C. Forms required and the criteria for reporting on each are as follows:

(i) Form BE-11A (Report for U.S. Reporter) must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE-11B(LF), BE-11B(SF), or BE-11C.

(ii) Form BE-11B(LF) or (SF) (Report for Majority-owned Foreign Affiliate).

(A) A BE-11B(LF) (Long Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$50 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(B) A BE-11B(SF) (Short Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$20 million (positive or negative), but for which no one of these items was greater than \$50 million (positive or negative), at the end of, or for, the affiliate's fiscal year.

(iii) Form BE-11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$20 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 1997 only, a Form BE-11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than \$100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) \* \* \*

(A) None of its exemption level items is above \$20 million.

(B) For fiscal year 1997 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of its exemption level items exceeds \$100 million.

(C) For fiscal years other than 1997, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(D) \* \* \*

(E) \* \* \*

(v) Notwithstanding the above, a Form BE-11B(LF), BE-11B(SF), or BE-11C must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

\* \* \* \* \*

[FR Doc. 95-18804 Filed 7-31-95; 8:45 am]

BILLING CODE 3510-DT-M

#### DEPARTMENT OF TRANSPORTATION

#### Coast Guard

#### 33 CFR Part 1

[CGD 94-105]

RIN 2115-AE99

#### Coast Guard Rulemaking Procedures

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** On June 14, 1995, the Coast Guard published a notice of proposed rulemaking (60 FR 31267) proposing the use of a "direct final rule" process for use with noncontroversial rules. Because of a request for additional time to comment on the proposed rulemaking the comment period is being reopened for 30 additional days.

**DATES:** Comments must be received on or before August 31, 1995.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 94-105), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT R. Goldberg, Staff Attorney, Regulations and Administrative Law Division, Office of Chief Counsel, U.S. Coast Guard Headquarters, (202) 267-6004.

**SUPPLEMENTARY INFORMATION:** The notice of proposed rulemaking published on June 14, 1995 invited and encouraged interested persons to participate in the proposed rulemaking by submitting written comments, including views, data or arguments by July 14, 1995. An organization requested additional time to prepare comments citing the need for additional time to disseminate information to effected persons. Because of this request the comment period is reopened for 30 additional days. Coast Guard is reopening the comment period on the notice of proposed rulemaking, "Coast Guard Rulemaking Procedures" which proposes allowing the use of direct final rulemaking procedures in certain situations. The NPRM was

published in the **Federal Register** on June 14, 1995 (60 FR 31267) with a comment period that ended July 14, 1995.

Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 94-105) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

Dated: July 24, 1995.

**J.E. Shkor,**

*Rear Admiral, U.S. Coast Guard, Chief Counsel.*

[FR Doc. 95-18763 Filed 7-31-95; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 194

[FRL-5266-7]

RIN 2060-AE30

#### Criteria for the Certification and Determination of the Waste Isolation Pilot Plant's Compliance With Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes

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

**ACTION:** Proposed rule; Re-opening public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is re-opening the public comment period on previously proposed criteria for certifying and determining whether the Department of Energy's Waste Isolation Pilot Plant (WIPP) complies with the disposal standards set forth in 40 CFR 191 (Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes). The proposed criteria and accompanying information were published in the **Federal Register** on January 30, 1995 (60 FR 5766-5791).

**DATES:** Comments in response to today's document must be received by September 15, 1995.

**ADDRESSES:** Comments in response to today's document should be submitted, in duplicate, to: Docket No. A-92-56, Air Docket, room M-1500 (6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460.

**FOR FURTHER INFORMATION CONTACT:** Mary Kruger or Elizabeth Forinash; telephone (202) 233-9310; address: Criteria and Standards Division, Mail Code 6602J, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. The proposed criteria and supplementary information are located in Docket A-92-56. The DOE draft compliance application, described below, is located in Docket A-93-02

**SUPPLEMENTARY INFORMATION:** The Department of Energy has proposed to use the WIPP, an underground geological repository in Eddy County, New Mexico, for the disposal of radioactive waste generated by atomic energy defense activities. On January 30, 1995 (60 FR 5766-5791), EPA published proposed criteria for certifying and determining whether the WIPP complies with EPA's radiation protection disposal standards set forth in 40 CFR 191. The final criteria will be used by EPA in determining whether the WIPP disposal system complies with the disposal standards, based on a compliance certification application to be submitted by DOE. See section 8 of the WIPP Land Withdrawal Act, Pub. L. No. 102-579.

EPA held a 90-day public comment period on the January 30, 1995 proposed WIPP compliance criteria that concluded on May 1, 1995. See 60 FR at 5766. EPA also conducted public hearings to receive additional public comments on the proposed criteria. The hearings were held in New Mexico from March 21-24, 1995. See 60 FR at 11060.

EPA received a request that EPA extend the initial 90-day public comment period by at least 30 days. In addition, DOE has submitted to EPA, in two parts, a draft compliance certification application. The DOE submittals have been placed in the compliance certification docket No. A-93-02, identified above. EPA does not expect DOE's draft compliance certification application to influence the contents of EPA's final compliance criteria. Nevertheless, members of the public have expressed concern that the draft application may affect EPA's final criteria.

EPA is re-opening the public comment period on the proposed compliance criteria until September 15,

1995, after considering the general request to extend the initial public comment period and to provide an opportunity for the public to comment on the proposed compliance criteria in light of DOE's draft compliance certification application. Comments in response to today's document must be received by September 15, 1995. The public is referred to the January 30, 1995 **Federal Register**, 60 FR 5766-5791, which contains the compliance criteria and accompanying information.

EPA will shortly announce a separate opportunity for public comment on DOE's draft compliance certification application. These comments will be considered in EPA's staff-level review of the draft application. EPA's staff-level review of the DOE draft application has no binding legal effect. EPA will determine whether the WIPP facility is in compliance with EPA's radiation disposal standards only after EPA issues final compliance criteria, receives a final DOE compliance certification application, and conducts a WIPP certification rulemaking proceeding in accordance with the Administrative Procedure Act rulemaking requirements at 5 U.S.C. 553.

#### Additional Docket Information

The Agency is currently maintaining the following public information dockets: (1) Dockets No. A-92-56 and A-93-02, located in room 1500 (first floor in Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (open from 8:00 a.m. to 4:00 p.m. on weekdays); (2) EPA's docket in the Government Publications Department of the Zimmerman Library of the University of New Mexico located in Albuquerque, New Mexico (open from 8:00 a.m. to 9:00 p.m. on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, and 1:00 p.m. to 9:00 p.m. on Sunday); (3) EPA's docket in the Fogelson Library of the College of Santa Fe in Santa Fe, New Mexico located at 1600 St. Michaels Drive (open from 8:00 a.m. to 12:00 midnight on Monday through Thursday, 8:00 a.m. to 5:00 p.m. on Friday, 9:00 a.m. to 5:00 p.m. on Saturday, 1:00 p.m. to 9:00 p.m. on Sunday); and (4) EPA's docket in the Municipal Library of Carlsbad, New Mexico located at 101 S. Halegueno (open from 10:00 a.m. to 9:00 p.m. on Monday through Thursday, 10:00 a.m. to 6:00 p.m. on Friday and Saturday, and 1:00 p.m. to 5:00 p.m. on Sunday). As provided in 40 CFR part 2, a

reasonable fee may be charged for photocopying docket materials.

**Richard Wilson,**

*Acting Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 95-18834 Filed 7-31-95; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 372

[OPPTS-400095; FRL-4958-8]

### Di-(2-ethylhexyl) Adipate; Toxic Chemical Release Reporting; Community Right-to-Know

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to grant a petition to delist di-(2-ethylhexyl) adipate (DEHA) (Chemical Abstract Service (CAS) No. 103-23-1), also known as bis-(2-ethylhexyl) adipate, from the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This action is based on EPA's preliminary conclusion that DEHA meets the deletion criteria of EPCRA section 313(d)(3). Specifically, EPA is proposing to grant this petition because, based on the total weight of available data, EPA believes that: (1) DEHA cannot reasonably be anticipated to cause significant acute adverse human health effects at concentration levels expected to occur beyond facility site boundaries and thus does not meet the criterion of EPCRA section 313(d)(2)(A); (2) DEHA does not meet the criterion of EPCRA section 313(d)(2)(B) because it cannot reasonably be anticipated to cause cancer, teratogenic effects, immunotoxicity, neurotoxicity, gene mutations, liver, kidney, reproductive, or developmental toxicity or other serious or irreversible chronic health effects; and (3) DEHA does not meet the criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause significant and serious adverse effects on the environment.

**DATES:** Written comments on this proposed rule must be received by October 2, 1995.

**ADDRESSES:** Submit written comments in triplicate and identified with docket number "OPPTS-400095" to: OPPT Document Control Officer (7407), Environmental Protection Agency, Rm. NE-G99, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: [ncic@epamail.epa.gov](mailto:ncic@epamail.epa.gov). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS-400095. No CBI should be submitted through e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit V. of this document.

**FOR FURTHER INFORMATION CONTACT:** Maria J. Doa, 202-260-9592, e-mail: [doa.maria@epamail.epa.gov](mailto:doa.maria@epamail.epa.gov), for specific information regarding this proposed rule. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, in Virginia and Alaska: 703-412-9877, or Toll free TDD: 800-553-7672.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

###### A. Statutory Authority

This action is taken under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499).

###### B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13106. Section 313 of EPCRA established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. DEHA was included in the initial list of chemicals and categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. EPA has added and deleted chemicals from the original statutory list. Under section 313(e), any person may petition EPA to

add chemicals to or delete chemicals from the list. EPA must respond to petitions within 180 days, either by initiating a rulemaking or by publishing an explanation of why the petition is denied.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has also published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemical substances from the section 313 list (59 FR 61439, November 30, 1994).

##### II. Description of Petition and Other Applicable Regulations

On January 18, 1995, EPA received a petition from the Chemical Manufacturers Association to exclude di-(2-ethylhexyl) adipate (DEHA) from section 313 of EPCRA. Specifically, the petition requests that DEHA be deleted from the list of reportable chemicals and not be subject to the annual reporting requirements under EPCRA section 313 and section 6607 of the PPA. The petitioner contends that DEHA should be deleted from the EPCRA section 313 list because, in their opinion, the available data show that DEHA does not meet the criteria for inclusion on the list of EPCRA section 313 chemicals.

Under the Safe Drinking Water Act, DEHA has a Maximum Contaminant Level of 0.4 milligrams per liter (mg/L).

##### III. EPA's Technical Review of Di-(2-ethylhexyl) adipate

###### A. Chemistry

DEHA (CAS No. 103-23-1), also known as bis(2-ethylhexyl) adipate and as dioctyl adipate, is an aliphatic ester used primarily as a plasticizer in a variety of products such as polyvinyl chloride (PVC) and other plastics, cellophane, rubber, and cosmetics. It is a light-colored, oily liquid with low water solubility (0.78 milligrams/liter (mg/L) at 22 °C measured in 1986). DEHA has a very high boiling point (410 °C), low volatility, very low pour point, and excellent low temperature fluidity (Ref. 1).

###### B. Toxicological Evaluation

Information on DEHA was reviewed for evidence indicating: (1) Bioavailability and metabolism; (2) acute toxicity; (3) chronic toxicity; (4) carcinogenicity; and (5) ecotoxicity.

### 1. Bioavailability and metabolism.

DEHA is well absorbed from the gastrointestinal tract of rats, mice, monkeys, and humans (Ref. 2). No data were available concerning the possible absorption of DEHA from the lung or through the skin.

DEHA is rapidly hydrolyzed to adipic acid and 2-ethylhexanol both *in vivo* and *in vitro*. 2-Ethylhexanol is subsequently metabolized to ethylhexanoic acid and other acid and hydroxy acid derivatives and their gluconuride conjugates. Adipic acid is further oxidized to carbon dioxide. Excretion is primarily in the urine, with smaller amounts excreted in the expired air (carbon dioxide) and feces (Ref. 2).

2. *Acute toxicity.* DEHA exhibits slight acute toxicity. The oral median Lethal Dose (LD<sub>50</sub>) value for rats is greater than 8 grams per kilogram (g/kg), and the dermal LD<sub>50</sub> value for rabbits is greater than 9 g/kg (Ref. 2). There was no mortality among rats exposed by inhalation to a saturated vapor. DEHA was not irritating to rabbit eyes and skin, and it was not a dermal sensitizer in guinea pigs.

3. *Chronic toxicity.* Several chronic and subchronic feeding studies in rats and mice show that DEHA is not highly toxic. The primary effect in both species appears to be body weight depression. In rats, the Lowest Observed Adverse Effect Level (LOAEL) was 1,125 milligrams per kilogram per day (mg/kg/day) for both the chronic and 13-week studies. In mice, the LOAELs ranged from 2,800 mg/kg/day (chronic study) to 900 mg/kg/day (13-week study) (Ref. 2).

The weight of the evidence from several mutagenicity assays indicates that DEHA is probably not mutagenic (Ref. 2). Although most mutagenicity assays on DEHA are negative, DEHA does produce chromosome mutations in mammalian cells in culture (weakly), increase DNA synthesis in rats *in vivo*, and induce dominant lethals in mice *in vivo*. A positive response in the dominant lethal without collaborating genotoxicity data in assay systems designed to assess basic mutagenicity hazard is not an indication of potential mutagenicity (Ref. 2).

Data on both developmental and reproductive system toxicity are limited (Ref. 2). For developmental toxicity, a standard protocol test is available for only one species. For reproductive toxicity, there is a one-generation test, but not a multi-generation test. The one-generation reproduction study on male and female rats showed a reduction in litter size with administration of approximately 1,080 mg/kg/day of DEHA in feed, but the reduction was small and not statistically significant.

The dominant-lethal assay discussed above found a dose-related increase in early fetal death, but the increase was not statistically significant and doses (0.46 to 9.2 g/kg, by single interperitoneal injection) were high.

4. *Carcinogenicity.* The National Toxicology Program tested DEHA for carcinogenicity in male and female rats and mice treated via diet (Ref. 2). Doses were approximately 700 or 1,500 mg/kg/day in the rat and 2,800 or 7,000 mg/kg/day in the mouse. The chemical was carcinogenic for female mice, inducing a significantly increased incidence of hepatocellular carcinomas. A marginally significant increase in hepatocellular carcinomas and adenomas combined was reported for male mice as compared with that of the concurrent controls. DEHA was not carcinogenic for the rats of either sex.

5. *Ecotoxicity.* DEHA is not expected to pose a significant hazard to the environment. Based on structure activity relationships (SARs), no toxic effects are anticipated for both freshwater and saltwater species at saturation (Ref. 2). For sediment species, acute and chronic toxicity are expected to occur only at high concentrations: 1,000 and 100 mg/kg (dry weight), respectively.

### C. Environmental Fate

DEHA released to air has an estimated half-life for hydroxy radical oxidation of 5.2 hours. No information was found on photolysis of DEHA in air.

DEHA released to water is expected to undergo biodegradation in the water column with a half-life on the order of days to weeks. It will also partition readily to sediment based on its estimated soil organic carbon partition coefficient of 15,500. Once bound to sediments, DEHA will probably continue to biodegrade, but possibly at a significantly slower rate (half-life on the order of months). Hydrolysis is not expected to be a significant removal process below pH 9 (estimated half-life = 3.2 years at pH 7).

DEHA released to soil is expected to adsorb strongly based on its estimated soil organic carbon partition coefficient (15,500). Biodegradation is possible, and could further mitigate migration through soil. Biodegradation half-life in soils is estimated on the order of weeks.

DEHA is expected to be removed from wastewater in biological wastewater treatment systems by adsorption and biodegradation. Based on available biodegradation data and physical chemistry properties, 90 percent removal in Publicly Owned Treatment Works was estimated.

### D. Exposure and Releases

Reported releases of DEHA were retrieved from the Toxic Release Inventory System (TRIS) and used to estimate air and water concentrations using TRIAIR and TRIWATER modeling techniques. The estimated maximum Lifetime Average Daily Potential Dose via inhalation (0.00178 mg/kg/day) is over 300-fold less than the Reference Dose (RfD) (0.6 mg/kg/day). The difference for oral exposure is much greater for water (Ref. 3). Based on this information, releases of DEHA are not expected to result in exposures of concern for human health or the environment.

The Agency believes that exposure considerations are appropriate in making determinations: (1) Under section 313(d)(2)(A); (2) under section 313(d)(2)(B) for chemicals that exhibit low to moderately low toxicity based on a hazard assessment; and (3) under section 313(d)(2)(C) for chemicals that are low or moderately ecotoxic but do not induce well-documented serious adverse effects. The Agency believes that exposure considerations are not appropriate in making determinations: (1) Under section 313(d)(2)(B) for chemicals that exhibit moderately high to high human toxicity based on a hazard assessment; and (2) under section 313(d)(2)(C) for chemicals that are highly ecotoxic or induce well-established adverse environmental effects. Given DEHA's low chronic toxicity and low ecotoxicity, exposure considerations are appropriate for determinations under sections 313(d)(2)(B) and (C) as part of this proposed rule to delist. A more detailed discussion of EPA's listing determination guidelines is provided in the **Federal Register** of November 30, 1994 (59 FR 61442).

### E. Technical Summary

Based on the total weight of available toxicity data, EPA believes that DEHA cannot reasonably be anticipated to cause significant adverse effects on human health or the environment. DEHA exhibits slight acute toxicity and causes adverse chronic effects only at high doses. Furthermore, DEHA is not expected to pose a significant hazard to the environment. In addition, based on EPA's exposure assessment, releases of DEHA are not expected to result in exposures of concern.

### IV. Rationale for Proposal to Grant

EPA is granting the petition by proposing to delete DEHA from the EPCRA section 313 list of toxic chemicals. This decision is based on the

Agency's preliminary determination that DEHA does not meet the toxicity criterion of EPCRA section 313(d)(2)(A) because it cannot reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

EPA has preliminarily concluded that DEHA does not meet the criterion of EPCRA section 313(d)(2)(B) because it cannot reasonably be anticipated to cause teratogenic effects, immunotoxicity, neurotoxicity, or liver, kidney, reproductive, or developmental toxicity or other serious or irreversible chronic health effects. Furthermore, while EPA has classified DEHA as a Group C, possible human carcinogen, clear evidence of carcinogenicity was observed in only one species-sex group (mice-female) in the animal studies. EPA believes that there is a lack of clear evidence of possible carcinogenicity in male mice. Therefore, EPA believes that, overall, the evidence is too limited to establish that DEHA is likely to cause cancer. EPA believes that DEHA has low chronic toxicity and accordingly has considered exposure factors. As stated above, EPA has concluded that anticipated exposure concentrations of DEHA are not expected to result in significant adverse effects. Therefore, EPA has preliminarily concluded that DEHA does not meet the EPCRA section 313(d)(2)(B) listing criterion.

EPA has also preliminarily determined that DEHA does not meet the toxicity criterion of EPCRA section 313(d)(2)(C) because it cannot reasonably be anticipated to cause adverse effects on the environment of sufficient seriousness to warrant continued reporting.

Thus, in accordance with EPCRA section 313(d)(3), EPA is proposing to delete DEHA from the section 313 list of toxic chemicals.

#### V. Rulemaking Record

A record has been established for this proposed rule under docket number "OPPTS-400095" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:  
nccic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

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

#### VI. References

- (1) USEPA, OPPT, EETD. Jenny Tou, "Chemistry Report on Di(2-ethylhexyl) Adipate," dated April 27, 1995.
- (2) USEPA, OPPT, CSRAD. Memorandum from Lorraine Randecker to Fred Metz, entitled "Petition to Delist Di(2-ethylhexyl) Adipate," dated May 22, 1995.
- (3) USEPA, OPPT, EETD. David Lynch, "Exposure Assessment for DEHA in Response to Delisting Petition," dated March 21, 1995.

#### VII. Regulatory Assessment Requirements

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and therefore not subject to OMB review.

EPA estimates that the reduction in costs to industry associated with the deletion of DEHA would be approximately \$322,620. The costs savings to EPA are estimated at \$8,664, if DEHA is deleted from the EPCRA section 313 list.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the rule. Because this proposed rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

#### C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

#### D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, EPA has assessed the effects of this regulatory action on State, local or tribal governments, and the private sector. This action does not result in the expenditure of \$100 million or more by any State, local or tribal governments, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12866 unit above.

#### List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community Right-to-Know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: July 24, 1995.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 372 is amended as follows:

1. The authority citation for part 372 would continue to read as follows:

**Authority:** 42 U.S.C. 11023 and 11048.

#### § 372.65 [Amended]

2. Sections 372.65(a) and (b) are amended by deleting the entry for Bis(2-ethylhexyl) adipate under paragraph (a) and the entire CAS number entry for 103-23-1 under paragraph (b).

[FR Doc. 95-18870 Filed 7-31-95; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR PART 1

[MM Docket No. 95-110; FCC 95-277]

#### Broadcast Services; Allocations; Automatic Stay

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** This Notice of Proposed Rule Making proposes to delete the automatic stay provision in Section 1.420(f) of the Commission's rules. That rule applies to proposals to amend the FM and TV Tables of Allotments and provides for

an automatic stay upon the filing of a petition for reconsideration of any Commission order modifying an authorization to specify operation on a different channel. The purpose of the proposed amendment is to remove any incentive to challenge an agency order simply to delay institution of expanded service by a competitor, and to expedite provision of improved service to the public.

**DATES:** Comments are due by August 28, 1995, and reply comments are due by September 12, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews (202-739-0774), Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making (NPRM) in MM Docket No. 95-110, adopted July 10, 1995, and released July 21, 1995. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Synopsis of Notice of Proposed Rule Making

1. With this Notice of Proposed Rule Making (NPRM), the Commission proposes to delete that portion of Section 1.420(f) of its rules, 47 CFR 1.420(f), which provides for an automatic stay, upon the filing of a petition for reconsideration, of any Commission order modifying an authorization to specify operation on a different channel. The purpose of the proposed amendment is to remove an apparent incentive for the filing of petitions for reconsideration that are largely without merit and to expedite provision of expanded service to the public.

2. Section 1.420(f) provides, in pertinent part:

\* \* \* The filing of a petition for reconsideration of an order modifying an authorization to specify operation on a different channel shall stay the effect of a change in the rules pending action of the petition.

3. Although Section 1.420(f) refers only to petitions for reconsideration, the Commission staff has also applied the automatic stay to orders challenged by

applications for review.<sup>1</sup> Our proposal to delete the automatic stay provision for petitions for reconsideration would also eliminate automatic stays in the context of applications for review.

4. The automatic stay was adopted by the Commission in 1975 as part of a provision that requires service of petitions for reconsideration in proceedings for amendment of the FM and TV Tables of Allotments on any licensee or permittee whose authorized frequency could be changed. Thus, it is apparent that the automatic stay was intended to help ensure that affected parties have the opportunity to comment before proposed modifications to their authorizations become effective.

5. Our intent in proposing to delete the automatic stay provision is to discourage parties from filing meritless petitions for reconsideration or applications for review that can substantially delay implementation of improved broadcast service. It is our experience that parties increasingly are filing challenges to approvals of their competitor's proposals to improve service, thereby triggering the automatic stay. Only a very small percentage of these petitions or applications for review are ultimately successful. Because the stay prohibits licensees from constructing modified facilities authorized by the Commission until final resolution of any outstanding reconsideration or application for review,<sup>2</sup> or until the stay is lifted, the stay provides an incentive for parties to challenge agency approval of a competitor's modification proposal simply to forestall institution of new competitive service. These petitions cause unjustifiable expense for parties and absorb valuable staff resources.

6. Elimination of the automatic stay would facilitate implementation of improved service to licensee communities, thereby promoting more efficient use of broadcast spectrum and resulting in significant public interest benefits. Because Section 1.420(f) will continue to require that petitions for reconsideration be served on any licensee or permittee whose authorization could be modified, the rights of these interested parties to be affirmatively informed of actions potentially affecting their interests will continue to be protected.

7. Elimination of the automatic stay, while allowing licensees to commence construction and operation of their modified facilities, would not prejudice final resolution of any challenges to the

initial staff decision. Licensees who proceed, where feasible, to construct and operate new facilities in instances in which a petition for reconsideration or application for review is pending bear the risk of an adverse final decision, and must take whatever steps are necessary to comply with the final order. Moreover, the Commission retains the authority to impose a stay in individual cases where circumstances warrant.<sup>3</sup>

8. We propose both to eliminate the automatic stay in prospective cases, and to lift the stay with respect to any petitions for reconsideration or applications for review pending as of the effective date of the Report and Order in this proceeding. We believe that lifting the stay in pending cases will further our objective of expediting provision of improved service to the public. We invite comment on this second aspect of our proposal in particular, as well as on our general proposal to eliminate the automatic stay.

### Administrative Matters

9. 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 August 28, 1995 and reply comments on or before September 12, 1995. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20554.

10. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See 47 CFR 1.1202, 1.1203, and 1.1206(a).

### Initial Regulatory Flexibility Analysis

11. Reason for Action: This proceeding was initiated to improve Commission procedures governing proposals to amend the FM and TV Tables of Allotments.

<sup>1</sup> See *Arlington TX*, 6 FCC Rcd 2050, 2051 n. 2 (1991).

<sup>2</sup> See, e.g., *Arlington TX*, *supra* n. 1.

<sup>3</sup> See 47 CFR 1.102(b), 1.106(n), and 1.115(h).

12. Objectives of the Action: The actions proposed in the *Notice* are intended to reduce the workload in the Allocations Branch of the Policy and Rules Division of the FCC's Mass Media Bureau by eliminating an apparent incentive to challenge agency approval of another station's modification proposal.

13. Legal Basis: The proposed action is authorized under sections 4 and 303 of the Communications Act of 1934, as amended. 47 U.S.C. §§ 154, 303.

14. Reporting, Record-keeping and Other Compliance Requirements: None.

15. Federal Rules which Overlap, Duplicate or Conflict with the Proposed rule: None.

16. Description, Potential Impact and Number of Small Entities Involved: Approximately 11,000 existing television and radio broadcasters of all sizes may be affected by the proposals contained in this *Notice*.

17. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The proposals contained in this *Notice* do not impose additional burdens on small entities.

18. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of the *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq* (1981).

#### List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95-18802 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Parts 61, 64, and 69

[CC Docket No. 95-116; FCC 95-284]

#### Telephone Number Portability

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission adopted a Notice of Proposed Rulemaking (Notice) seeking comment on a wide variety of policy and technical issues concerning the portability of telephone numbers. Number portability is the ability of end users to retain their telephone number when they switch to a new service provider, a new location, or a new service. Number portability provides consumers with greater personal mobility and flexibility in the way they use telecommunications services, and it fosters competition among alternative providers of local telephone and other telecommunications services. Through this Notice the Commission will examine the overall benefits, technical feasibility, and implementation costs of number portability in various forms.

**DATES:** Comments must be received on or before September 12, 1995; reply comments must be received on or before October 12, 1995.

**ADDRESSES:** Comments and reply comments must be filed with the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554; one copy shall also be filed with the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037 (202/857-3800). The complete text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., Room 239, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Matthew J. Harthun, (202) 418-1590 or Carol E. Matthey, (202) 418-1580, Policy and Program Planning Division, Common Carrier Bureau.

#### SUPPLEMENTARY INFORMATION:

##### Synopsis of Notice of Proposed Rulemaking

##### A. Portability for Geographic Telephone Numbers

The Commission tentatively concludes that the portability of geographic telephone numbers benefits consumers by providing them greater personal mobility and flexibility in the use of telecommunications services and by contributing to the development of

competition among alternative providers of local telephone and other telecommunications services. The Commission seeks comment on this tentative conclusion and on the public interest benefits of number portability. Furthermore, the Commission tentatively concludes that it should assume a leadership role in developing a national number portability policy due to the impact on interstate telecommunications. It seeks comment on this tentative conclusion and on the specific nature of the Commission's role. The Commission recognizes, however, that it has insufficient information on the costs (monetary and nonmonetary) of making geographic telephone numbers portable either between service providers, services, or locations. Therefore, it seeks comment on: (1) The feasibility, limitations and costs of longer-term number portability solutions; (2) the feasibility, limitations, and costs of interim number portability measures; and (3) issues associated with a transition to a permanent number portability environment.

##### 1. Importance of Number Portability

1. *Service Provider Number Portability.* In light of its tentative conclusions that the portability of geographic numbers benefits consumers and would contribute to the development of competition among alternative providers of local telephone services, the Commission identifies, and seeks comment on, specific issues concerning the competitive impact of number portability.

2. The competitive importance of service provider number portability depends primarily on the value that customers assign to their current telephone numbers. When end users attach a significant value to retaining their telephone numbers while changing service providers, a lack of number portability likely would deter entry by competitive providers of local services. Business customers, in particular, may be reluctant to incur the administrative, marketing, and goodwill costs of changing telephone numbers. These disincentives to changing service providers may be mitigated, however, if a significant number of customers change their telephone numbers for other reasons. Both residential and business customers change their numbers for a variety of reasons; for example, customers move to areas served by different central offices. Moreover, changes in area codes, such as area code splits or overlays, create a certain level of number churn.

3. The Commission asks commenting parties to provide studies, data, and

other information on the relative importance of service provider number portability to the decisions of end users when considering whether to take service from competing providers. It is particularly interested in assessing the importance of number portability relative to other potential deterrents to competitive entry into the provision of local services. Commenting parties also are invited to provide studies, data, and other information on the extent to which situations, such as number churn, and other factors enable competing providers of local telephone services to compete for customers without service provider number portability. Further, the Commission seeks specific information on whether different customer groups vary with respect to the value they assign to service provider number portability.

4. To the extent that wireless service providers offer services in competition with local telephone companies, a lack of service provider portability may significantly hamper their ability to compete efficiently to serve existing customers of the incumbent wireline service providers. Parties are asked to provide comment, studies, data, and other information on: (1) The competitive significance of service provider number portability for the development of competition between wireline and wireless service providers; and (2) the current, and estimated future, demand of wireless customers for portable wireless telephone numbers when they change their service provider either to another wireless service provider or to a wireline provider. The Commission previously sought comment on certain "number transferability" issues in the *Second CMRS Interconnection NPRM* (60 FR 20949, at ¶ 94, n. 192). It noted there that it might address those issues in this or in the *CMRS Interconnection* proceeding.

5. *Service Portability.* The need for service portability arises when a particular service is available only through a particular switch. The same factors that inhibit customers from changing number in order to change service providers may also deter customers from taking new services. The Commission seeks comment on the demand for service portability, and the extent to which a lack of service portability inhibits the growth of new services, such as integrated service digital network (ISDN). It seeks comment, studies, data, and other information on the relative importance of service portability to the decision of end users when considering whether to switch from one service to another. It

also seeks comment on what federal policy objectives would be served by encouraging (or possibly mandating) implementation of service portability, and steps the Commission could take to encourage service portability.

6. *Location Portability.* Today, telephone subscribers must change their telephone numbers when they move outside the area served by their current central office. Location portability would enable subscribers to keep their telephone numbers when they move to a new neighborhood, a nearby community, across the state, or even, potentially, across the country. The Commission seeks comment on the extent to which there is demand for location portability and the geographic area in which portability is desired by consumers. What federal policy objectives would be served by encouraging (or possibly mandating) implementation of location portability, and how could such objectives be attained? The Commission seeks comment on the potential impact that implementation of location portability for wireline telephone number may have on the development of the 500 personal communications services market. Conversely, it seeks comment on the cross-elastic effects of the availability of personal mobility services offered through 500 and wireless services on demand for location portability of wireline telephone numbers. Finally, it seeks comment, studies, data, or other information on the extent to which end users are requesting 800 numbers to obtain location portability.

## 2. The Commission's Role

7. Currently, it appears unlikely that market forces alone will drive the development and deployment of a number portability solution. The Commission seeks comment on whether there should be a regulatory mandate requiring the availability of number portability measures for geographic telephone numbers. Assuming market forces will push the development and deployment of number portability, the Commission seeks comment on whether market forces are sufficient to promote a nationwide, uniform development of number portability absent such a regulatory mandate.

8. The Commission tentatively concludes that it has a significant interest in promoting the nationwide availability of number portability due to the likely impact upon interstate telecommunications. In the United States, the same set of telephone numbers is used to route intrastate, and international telephone calls to

individual telecommunications customers. The Commission tentatively concludes that it is within the Commission's jurisdiction to ensure that the portability of telephone numbers within the numbering system is handled efficiently and fairly. The Commission also tentatively concludes that there is a federal interest in this area because deployment of different number portability solutions across the country would have a significant impact on the provision of interstate telecommunications services. Finally, the Commission tentatively concludes that it has a federal interest in fostering the development of number portability due to its interest in efficient use of the numbering resource.

9. The Commission recognizes that state regulators also have legitimate interests in the development of number portability, and that they are conducting tests and deploying number portability measures. While the Commission encourages these tests because they will provide empirical evidence and other relevant information, it notes that state requirements governing number portability should not thwart or impede national policies, such as nondiscrimination and competitive neutrality. The Commission seeks comment on areas where state and federal policies on number portability are likely to diverge or become inconsistent, and on the additional costs associated with having different number portability approaches on a state-by-state basis or on a regional basis. Parties should address the need to develop a uniform solution to the provision of number portability, and whether the deployment of different number portability methods across the country is in the public interest.

10. In the event the Commission concludes that number portability should be implemented on a nationwide basis, what specific actions can and should it take to expedite such implementation? For instance, should the Commission direct implementation of number portability by a date certain and direct an industry group to develop a detailed implementation plan? Alternatively, should the Commission adopt rules specifying how number portability shall be implemented? If it mandates implementation of specific number portability measures, upon whom should this obligation fall, and what is a realistic time frame in which that mandate should become effective?

11. Finally, the Commission seeks comment on its appropriate role in establishing technical and performance standards for number portability. Should it leave the establishment of

number portability standards to industry organizations and standards-setting bodies, and simply monitor the activities of these groups? Or, should it direct industry bodies to resolve certain issues (technical or otherwise)? If so, which issues should be designated for resolution by these groups, and to which organizations should they be directed? Is it reasonable for the Commission to establish deadlines for the resolution by industry of issues involving number portability? If so, parties should provide recommended time frames. Alternatively, should the Commission take a more active role in the development of such number portability standards? For example, should it develop, and mandate compliance with, particular number portability standards, or should it establish non-binding standards or guidelines?

### 3. Longer-Term Number Portability Solutions

12. The Commission seeks comment on what longer-term number portability solution is in the public interest. For purposes of this section, the Commission intends "number portability" to encompass service provider, service, and location portability because a method for providing location portability likely will also enable customers to change service providers and services without changing their telephone numbers. The Commission asks commenting parties to draw upon relevant information obtained through the various ongoing number portability trials.

13. *Current Proposals.* In response to the New York request for proposals (RFP), MCI Metro (partnered with DSC Communications, Northern Telecom, Tandem Computers, and Siemens Stromberg-Carlson) has proposed a database method that would enable end users within a particular geographic region (most likely a state) to retain their NXX code and line number if they change their local service provider. AT&T has proposed to the Industry Numbering Committee (INC) workshop a similar database method for providing service provider portability on a regional basis. The trial in Seattle, Washington is testing a method developed by Stratus Computer and U.S. Intelco—namely, a mapping scheme that uncouples the end user's telephone number from its geographic location. Finally, in the context of the INC number portability workshop, GTE has proposed to implement number portability by requiring customers to change, on a one-time basis, their

telephone number to, for example, a 700 number.

14. The Commission seeks comment on the advantages and disadvantages of the MCI Metro, AT&T, Seattle, and GTE proposals. It asks whether any of these proposals provide a workable model for national implementation of number portability for geographic numbers and whether there are other workable proposals.

15. The Commission tentatively concludes that a number portability environment should support operator services and enhanced 911 services. It seeks comment on the extent to which the various proposals support these services. The Commission also tentatively concludes that any number portability proposal should efficiently use telephone numbers. It seeks comment on the impact that each of the proposals would have on the numbering resource.

16. *Call Processing Scenarios.* The Commission seeks comment on which of the following three call processing scenarios, or any alternative, would best serve the public interest. The three scenarios are: (1) The terminating "access" provider (TAP) scenario, which places the burden of doing the database query on the terminating access provider; (2) the originating service provider (OSP) scenario, which requires the originating service provider to perform the database query and pass the information necessary to complete the routing of a call to subsequent carriers; and (3) the N-1 ("N minus 1") scenario, where the carrier immediately prior to the terminating service provider performs the database query. The Commission requests that commenters discuss the different burdens that each scenario would place on the relevant carriers involved, any methods that would reduce the number of database queries, the burden such scenarios would place on current SS7 networks and next-generation system signaling networks, and the network modifications such scenarios would require. The Commission also requests that commenters address the impact that any call processing scenario would have on transmission quality, call set-up time, and any other relevant service quality considerations. The Commission seeks comment on how various call processing scenarios would operate under the proposals offered by MCI Metro, AT&T, GTE, or any alternative, and on whether certain proposals are limited to specific call processing scenarios. It also seeks comment on which carrier, or carriers, perform the database query in the Seattle trial, and

what has been learned from that experience.

17. *Geographic Scope.* The Commission seeks comment on whether telephone numbers should be portable within local calling areas, throughout a particular area code, state-wide, regionally, nationwide, or on some other basis. What are the advantages and disadvantages of each of these alternatives, and what are the implications of each for carriers and their customers? For example, what changes would the different alternatives require for carrier billing systems? To what extent do varying approaches differently impact different types of carriers, such as local exchange carriers (LECs), new wireline carriers, and wireless carriers?

18. What is the geographic scope of the number portability trial in Seattle, and what geographic scope is contemplated in the proposals offered by MCI Metro, AT&T and GTE? The Commission seeks comment on whether these proposals could be used to provide number portability on a nationwide basis without significant network modifications.

19. *Architecture.* The Commission seeks comment on what database architecture would best serve the public interest. To what extent is the database used to provide 800 number portability a useful model? Is it technically feasible to deploy a single database to implement number portability on a nationwide basis, or should a database solution be designed to use a number of distributed (that is, regional) databases? If the latter, in what geographic areas should such databases operate, and what are the advantages, disadvantages, and relative costs of each approach?

20. The Commission also seeks comment on the method for administering and modifying the data contained in the database(s). Is it better to update and modify such data from a single, central location, or should that process be initiated by different sources? If a de-centralized system for updating the data is preferred, what processes will be required to ensure that the data in different databases is updated consistently and without discrepancies? The Commission also seeks comment on the types of information the database(s) will need to contain and who should be permitted access to such data.

21. *Administration of the Database.* The Commission seeks comment on who should own the database(s) used to provide a longer-term number portability solution. Further, it seeks comment on how such a database (or databases) should be maintained and

funded. The Commission seeks comment on the criteria that should be used to evaluate potential administrators of a number portability database system and who should select the administrator. Finally, the Commission seeks comment on the scope of responsibilities that should be placed on the administrator or administrators of such a database or databases.

22. *Costs and Cost Recovery Issues.* In order to weigh the public interest benefits of deploying a longer-term number portability solution against the current interim measures, the Commission must consider the costs associated with designing, building, and deploying such a longer-term solution. The Commission requests comment, data, studies and other information on the estimated costs to design, build, and deploy a longer-term database solution. The Commission also seeks comment on how these costs should be allocated between federal and state jurisdictions. Commenting parties should, to the extent possible, estimate both the total cost of infrastructure necessary to deploy number portability and the long-term incremental cost of deploying number portability, exclusive of other costs such as network equipment and hardware and software upgrades that would be incurred without implementation of number portability.

23. The Commission also seeks comment on how and from whom the costs of designing, building, deploying, and operating a database system should be recovered. If the Commission mandates that LECs implement number portability, should they be allowed to treat these as exogenous costs, and thereby increase their rates? Parties should comment on whether the costs of a database system should be shared between all carriers using the system. Alternatively, should competing providers of local telephone services and their customers bear the costs of such a database system?

#### 4. Interim Number Portability Measures

24. To evaluate whether a transition to a longer-term number portability solution is in the public interest, the Commission must understand what measures are currently available for providing number portability.

25. The Commission seeks comment on the costs, and offsetting benefits, of implementing the interim number portability measures, such as remote call forwarding (RCF), flexible direct inward dialing (DID), and their derivatives. The Commission recognizes that RCF and flexible DID have significant limitations. Parties are asked

to comment and elaborate on the limitations and disadvantages of RCF, flexible DID, and their derivatives. Further, the Commission asks commenting parties to discuss the availability of these interim measures and their effectiveness as an interim substitute for a database number portability solution. Finally, parties should consider whether these interim measures can be improved so that they are workable, long-term solutions, and if so, at what cost.

26. *Cost Recovery for Interim Measures.* The Commission seeks comment on whether the costs of interim number portability measures should be recovered from the new local service providers, or their customers. The Commission also seeks comment on the amounts charged for these interim measures, whether such rates have a significant competitive impact, and whether reductions in such rates would make these measures more workable as long-term solutions. Finally, it asks parties to propose alternative ways to recover the costs of interim measures.

#### 5. The Transition From Interim Portability Measures

27. It is not clear at this point whether the industry will move to a longer-term solution that provides only service provider number portability, or will evolve to a location portability environment. Commenting parties should identify any transitional issues that are unique to either environment and the particular impacts that short-term choices may have on longer-term possibilities.

28. *Transition to Service Provider Portability.* The Commission seeks comment on the estimated time frame to design, build, and deploy a system that would provide service provider portability. Commenting parties should address the modifications that would be necessary to implement a transition to service provider portability, including, but not limited to, modifications to the carriers' networks, operating procedures (for example, billing and collection procedures), and dialing plans. The Commission seeks comment on whether the ability to transfer wireless telephone numbers between different service providers (wireline and wireless) places the same burden on the LECs and other carriers as transferring wireline telephone numbers.

29. *Transition to Location Portability.* The Commission also seeks comment on the estimated time frame to design, build, and deploy a system capable of providing location portability. Commenting parties should address the modifications that would be necessary

to implement a transition to location portability, including, but not limited to, modifications to the carriers' networks, operating procedures (for example, billing and collection procedures), and dialing plans.

30. In a location portability environment, the association between telephone numbers and geographic locations will dissolve, and dialing parties may not be able to determine from the telephone number they dial the charge incurred by placing a telephone call. The Commission seeks comment on the impact that a transition to location portability would have on consumers, the network, service providers, and others. Are there ways to provide dialing parties notification of the charge they will incur when they dial a particular number? What effect will location portability have on operator services, director assistance, enhanced services, the way carriers determine rates for toll and interLATA calls, and billing systems? What impact would location portability have on the current administration of the numbering resource?

31. *Public Interest of a Transition to Longer-Term Solution.* To determine what would best serve the public interest, the Commission seeks comment comparing the relative costs and benefits associated with the current interim solutions to the costs and benefits associated with alternative longer-term solutions. In answering this question, parties are encouraged to focus on the costs and benefits of the specific proposals currently being tested in Seattle and developed by MCI Metro, AT&T, and GTE. Is it in the public interest to require only that carriers make available interim measures that accommodate number portability and not require the implementation of a longer-term number portability solution? The Commission also seeks comment on the additional costs that would be incurred, and the benefits that would be attained, by evolving to location portability from an intermediate step of service provider portability.

#### B. Portability for Non-geographic Telephone Numbers

32. The Commission tentatively concludes that service provider portability for 900 and 500 (PCS N00) numbers is beneficial for customers of those services. The Commission seeks comment on this tentative conclusion and on the costs (monetary and nonmonetary) of making such portability available. The term "PCS" is used here generically as "a set of capabilities that allows some

combination of personal mobility, terminal mobility, and service profile management." PCS N00 number portability includes 500 number portability. The term "PCS" or "personal communications services" as used here is different from the term "personal communications services" as defined in part 24 of the Commission's rules. (47 CFR 24.5). The Commission seeks to gather more information to determine whether the public interest would be served by mandating portability for 900 and PCS N00 services, and it considers other issues related to the implementation of such number portability.

33. The Commission seeks comment on whether developing and deploying a method for providing number portability for geographic telephone numbers could, or should, include service provider number portability for non-geographic telephone numbers, such as 500 and 900 numbers. It is technically possible, and cost effective, to use the same database method, and possibly the same database, to provide service provider portability for geographic and service-specific (non-geographic) telephone numbers? Similarly, is it technically possible, and cost effective, to use the same database to provide service provider portability for all types of non-geographic numbers, such as 800, 500, and 900 numbers, or is it preferable to use separate databases for each type of non-geographic number?

#### 1. 900 Service Provider Portability

34. The Commission seeks comment on various issues relating to portability of 900 numbers. The Commission asks parties to address the extent to which 900 number portability will lower prices and thereby stimulate demand for 900 number services. Parties are asked to provide comment, studies, data, and other information on the estimated cost of designing, building, and deploying a 900 database, and the estimated costs of operating such a database. Is it technically feasible to upgrade the existing 800 database and associated software to accommodate 900 numbers, and if so, at what cost? Is advanced intelligent network (AIN) a less costly way to implement 900 number portability? The Commission also seeks comment on whether it should direct an industry group to develop an implementation plan for a 900 number portability database, and if so, to which industry group should this task be referred. If the Commission decides to mandate implementation of service provider portability for 900 numbers,

what is a realistic schedule for implementation?

#### 2. 500 Service Provider Portability

35. Presently, LECs provide 500 access by two methods: Switch-based translation or database capabilities. The Commission seeks comment on the extent to which LECs are using AIN capabilities or database technology to provide 500 access, and on the impact that PCS N00 service provider portability would have on the LEC networks. The Commission also seeks comment on whether it is feasible (both technically and economically) to provide PCS N00 service provider portability in a switched-based translation environment.

36. The Commission asks parties to address the extent to which PCS N00 number portability will lower prices, and thereby stimulate demand for PCS N00 number services. Parties are asked to provide comment, studies, data, and other information on the estimated costs of designing, building, and deploying a PCS N00 database, and the estimated costs of operating such a database. The Commission seeks comment on whether it is technically feasible to upgrade the existing 800 database and associated software to accommodate PCS N00 numbers, and if so, at what cost.

37. On May 17, 1995, the INC submitted a report to the Bureau that sets forth alternative database architectures for such portability and an estimated implementation schedule. See letter from Denny Byrne and Robert Hirsch, Co-Chairs, INC, to Kathleen M.H. Wallman, Chief, Common Carrier Bureau, FCC, dated May 17, 1995, attaching *INC Report on PCS N00 Portability*, INC 95-05212-010 (*PCS N00 Portability Report*) (incorporated into the docket of this proceeding). The Commission seeks comment on the advantages, disadvantages, and relative costs of the proposed architectures and call flow scenarios set forth in the *PCS N00 Portability Report*.

38. The Commission tentatively concludes that the owner/operator of the service management systems administering the PCS N00 database should be a neutral third party. The Commission seeks comment on the tentative conclusion. The Commission also seeks comment on: (1) Who will be the owner/operator of the service management systems administering the data contained in the PCS N00 database; (2) how will the owner/operator be selected; (3) how will the costs of providing PCS N00 number portability be recovered; and (4) by what date should PCS N00 number portability be deployed.

39. The Commission further seeks comment on whether it should direct an industry group to proceed with the development of an implementation plan for PCS N00 service provider portability. Assuming such a directive is in the public interest, it seeks comment on what industry group (for example, Alliance for Telecommunications Industry Solutions or the Telecommunications Industry Association) should be selected to develop the detailed implementation plan for the database. Finally, the Commission asks parties to comment on the estimated implementation schedule set forth in the *PCS N00 Portability Report* and to propose an alternative schedule, if appropriate.

#### C. Procedural Matters

40. *Ex Parte*. This is a non-restricted notice and comment rulemaking. *Ex parte* presentations are permitted, except during the Sunshine period, provided they are disclosed as provided in the Commission's rules. (47 CFR 1.1202, 1.1203, and 1.1206(a)).

41. *Regulatory Flexibility Act*. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities resulting from the policies and proposals set forth in the *Notice*. The IRFA is contained in appendix A to the *Notice*. The Secretary shall cause a copy of the *Notice*, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

42. *Notice and Comment*. Notice is given of the proposed changes in the Commission's policies regarding number portability. Comment is invited on the proposals pursuant to sections 1, 4(i), 4(j), 201-205, 218, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201-205, 218, and 332. To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. Parties wanting each Commissioner to receive a personal copy of their comments must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, NW., Washington, DC 20554.

Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Service, Inc. (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037 (202/857-3800). Comments and reply comments will be available for public inspection during regular business in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC.

#### D. Ordering Clauses

43. Accordingly, it is ordered that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201-205, 218, and 332 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201-205, 218, and 332, a notice of proposed rulemaking is hereby adopted.

44. It is further ordered that the Petition for Rulemaking filed by the Teleservices Industry Association on October 18, 1994, is granted.

#### List of Subjects in 47 CFR Parts 61, 64, and 69

Communications common carriers, Telephone.

Federal Communications Commissions.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95-18801 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 95-113; RM-8664]

#### Radio Broadcasting Services; Salem, WV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Salem-Teikyo University proposing the allotment of Channel 258A at Salem, West Virginia, as the community's second local FM transmission service. Channel 258A can be allotted to Salem in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 258A at Salem are North Latitude 39-17-00 and West Longitude 80-34-00. Since Salem is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

**DATES:** Comments must be filed on or before September 18, 1995 and reply comments on or before October 3, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, L.L.P., 1776 K Street NW., Suite 200, Washington, DC 20006 (Counsel for Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-113, adopted July 7, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

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

[FR Doc. 95-18792 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-120, RM-8650]

#### Radio Broadcasting Services; Premont, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Paulino Bernal, licensee of Station KMFM(M),

Channel 285A, Premont, Texas, seeking the substitution of Channel 264C3 for Channel 285A at Premont, Texas and modification of Station KMFM(FM)'s license to reflect the non-adjacent higher class channel. Channel 264C3 can be allotted to Premont in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.7 kilometers (4.8 miles) east in order to avoid a short spacing conflict with the licensed site of Station KBDR(FM), Channel 263C2, Mirando City, Texas. The coordinates for Channel 264C3 at Premont are 27-21-35 and 98-02-45. Mexican concurrence will be requested for this proposal. In addition, in the event that competing expressions of interest are received, we may not modify petitioner's authorization since there are no additional Class C3 channels available for use by any other interested parties.

**DATES:** Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Barry D. Wood, Jones, Waldo, Holbrook & McDonough, 2300 M Street NW., Washington, DC 20037 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-120, adopted July 14, 1995, and released July 26, 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 contractor, ITS, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

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

[FR Doc. 95-18794 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-122, RM-8668]

#### Radio Broadcasting Services; Lexington, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Floriplex, Inc., proposing the allotment of Channel 243A to Lexington, Tennessee, as the community's second commercial FM service. Channel 243A can be allotted to Lexington in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.1 kilometers (5.6 miles) northeast in order to avoid a short-spacing conflict with the licensed site of Station WMOD(FM), Channel 244A, Bolivar, Tennessee. The coordinates for Channel 243A at Lexington are 35-43-33 and 88-21-13.

**DATES:** Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis J. Corbett, Leventhal, Senter & Lerman, Suite 600, Washington, DC 10006-1809 (Counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-122, adopted July 18, 1995, and released July 26, 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 contractor, ITS, Inc., (202) 857-

3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

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

[FR Doc. 95-18796 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-114, RM-8666]

#### Radio Broadcasting Services; Raton, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by N'Joy Broadcasting seeking the allotment of Channel 243A to Raton, NM, as the community's second local FM service. Channel 243A can be allotted to Raton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36-54-00 North Latitude and 104-24-00 West Longitude.

**DATES:** Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mary Alice Rateau, 8264 South Cody, Littleton, CO 80123 (Petitioner) and Larry G. Fuss, P.O. Box 1787, Cleveland, MS 38732 (Consultant to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-114, adopted July 10, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

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

[FR Doc. 95-18793 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-112, RM-8663]

#### Radio Broadcasting Services; Lordsburg, NM

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Hildalgo County Broadcasters to allot Channel 279C3 to Lordsburg, NM, as the community's second local FM service. Channel 279C3 can be allotted to Lordsburg in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 32-20-48; 108-42-36. Mexican concurrence in the allotment is required since Lordsburg is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

**DATES:** Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1225 Connecticut Avenue NW., Suite 300, Washington, DC 20036 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-112, adopted July 10, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

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

[FR Doc. 95-18795 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-111, RM-8652]

#### Radio Broadcasting Services; Athens, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by WMS1, Inc., requesting the allotment of Channel 241A to Athens, Illinois, as that community's first local transmission service. Channel 241A can be allotted to Athens in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) southwest, in order to avoid a short-spacing to the licensed sites of Station WHOW(FM), Channel 240A, Clinton, Illinois, and Station KMXG(FM), Channel 241C1, Clinton, Iowa. The coordinates for Channel 241A at Athens, Illinois are North Latitude 39-53-57 and West Longitude 89-46-04.

**DATES:** Comments must be filed on or before September 18, 1995, and reply comments on or before October 3, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry Williams, WMS1, Inc., 2901 S. Holmes, Springfield, Illinois 62704.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-111, adopted July 5, 1995, and released July 26, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1919 M Street, NW., Room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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

Radio broadcasting.

Federal Communications Commission.

**Andrew J. Rhodes,**

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

[FR Doc. 95-18800 Filed 7-31-95; 8:45 am]

BILLING CODE 6712-01-F

#### INTERSTATE COMMERCE COMMISSION

#### 49 CFR Part 1312

[Ex Parte No. MC-220]

#### The Municipality of Anchorage, AK— Notices for Rate Increases for Alaska Intermodal Motor/Water Traffic— Petition for Rulemaking

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing a change in its regulations to require carriers filing new short-notice publications generally to send the filings to the subscriber not later than the time the copies for official filing are sent to the Commission. This change will give subscribers more time to consider the short-notice publications.

**DATES:** Written comments must be filed with the Commission by August 31, 1995.

**ADDRESSES:** Send an original and 10 copies of pleadings referring to Ex Parte No. MC-220 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Ave., N.W., Washington, DC 20423; and (2) Petitioner's representative: William P. Jackson, Jackson & Jessup, P.C., Post Office Box 1240, Arlington, VA 22210-0540.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** The Commission is instituting a rulemaking proceeding in response to a petition filed May 25, 1994, by the municipality of Anchorage, AK. Petitioner requested new regulations that would facilitate challenges to short-notice rate increase publications for intermodal motor/water service to and from Alaska. The Commission is proposing to require that all short-notice publications—including (1) short-notice publications not involving the intermodal Alaska trade; and (2) rate decreases as well as increases—be sent to subscribers on the date the publications are sent to the Commission for filing. The full text of the regulation is set forth below.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2209, Washington, DC 20423. Telephone: (202) 927-7428. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

**Regulatory Flexibility Analysis**

We certify that the proposed regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The proposed rule directly affects only the mailing date for notification. Although it may, in a minor way, facilitate the ability of small businesses to challenge rate changes, the effect of the proposed rule, if adopted, will not be significant. Nevertheless, we welcome any comments regarding the effect of the proposal on small entities.

**Environmental and Energy Considerations**

The proposed rule will not significantly affect either the quality of the human environment or the conservation of energy resources. We preliminarily conclude that, if we subsequently adopt the proposed rule, an environmental assessment would not be necessary under our regulations because the proposed action would not result in any changes in carrier operations. See 49 CFR 1105.6(c)(2). Nevertheless, we invite comments on the environmental and energy impacts of the proposal.

**List of Subjects in 49 CFR Part 1312**

Household goods freight forwarders, Motor carriers, Moving of household goods, Pipelines, Tariffs, Water carriers.

Decided: July 13, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

**Vernon A. Williams,**  
*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X, part 1312 is proposed to be amended as follows:

**PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS OF MOTOR, PIPELINE AND WATER CARRIERS, AND HOUSEHOLD GOODS FREIGHT FORWARDERS**

1. The authority citation for part 1312 continues to read as follows:

**Authority:** 5 U.S.C. 553; 49 U.S.C. 10321, 10762, and 10767.

2. Section 1312.6, paragraph (b)(2) is proposed to be revised to read as follows:

**§ 1312.6 Furnishing copies of tariff publications.**

\* \* \* \* \*

(b) \* \* \*

(2) Newly-issued tariffs, supplements, or loose-leaf pages, including short-notice publications, shall be sent to each subscriber not later than the time the copies for official filing are sent to the Commission, except that with the advance, written permission of the subscriber, any publication may be sent not later than 5 working days after the time the copies are sent to the Commission.

\* \* \* \* \*

[FR Doc. 95-18825 Filed 7-31-95; 8:45 am]

BILLING CODE 7035-01-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 663**

[Docket No. 950209046-5191-04; I.D. 071495A]

**RIN 0648-AG82**

**Pacific Coast Groundfish Fisheries; Control Date**

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

**ACTION:** Advance notice of proposed rulemaking; consideration of a control date.

**SUMMARY:** This notice announces that the Pacific Fishery Management Council (Council) is considering whether there is a need to impose additional management measures to further limit harvest capacity in the nontrawl limited entry fishery for sablefish in the Pacific groundfish fishery in the exclusive economic zone (EEZ) off the States of Washington, Oregon, and California. If it is determined that there is a need to

impose additional management measures, the Council may recommend a rulemaking to do so. Possible measures include the establishment of a limited entry program for the sablefish fishery through the establishment of a sablefish endorsement for nontrawl limited entry "A" permits to control participation or effort in the nontrawl sablefish fishery. If a limited entry program is established, the Council is considering June 29, 1995, as a possible control date. Consideration of a control date is intended to discourage new entry by nontrawl "A" permit holders into the sablefish fishery based on economic speculation during the Council's deliberation on the issues. Persons interested in the limited entry sablefish fishery should contact the Council to stay up to date on the management direction in the fishery.

**DATES:** Comments must be submitted by August 31, 1995.

**ADDRESSES:** Comments should be directed to the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson 206-526-6140; or Rodney R. McInnis 310-980-4040.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan (FMP) for Pacific groundfish was approved on January 4, 1982 (47 FR 43964; October 5, 1982), and implementing regulations appear at 50 CFR parts 611 and 663. On November 16, 1992, NMFS published final regulations implementing Amendment 6 to the Pacific groundfish FMP (57 FR 54001), codified at 50 CFR part 663, subpart C. Amendment 6 and its implementing regulations establish a license limitation limited entry program for the commercial groundfish fishery based on the issuance of gear-specific Federal limited entry permits. Limited entry permits are endorsed for one or more of three gear types (trawl, longline, and trap (or pot)). A vessel meeting specific minimum landing requirements with a particular gear during the qualifying "window period" (July 11, 1984, through August 1, 1988) received a transferable permit with an "A" endorsements for that gear.

Amendment 6 also divides the Pacific Coast commercial groundfish fishery into two segments. The first segment is the limited entry fishery, consisting of vessels with limited entry permits endorsed for longline and/or trap (or pot) gear and all vessels using trawl gear. The second segment is the open access fishery, consisting of vessels using all other gear, as well as vessels that do not have limited entry permits endorsed for use of longline or trap (or

pot) gear, but that make small landings with longline or trap (or pot) gear.

The annual sablefish harvest guideline, after deductions for treaty Indian harvest and allocation to the open access fishery, is divided between the limited entry trawl fishery (58 percent) and the limited entry longline/fish trap (or pot) fishery (42 percent), which is called the nontrawl fishery. The regular sablefish fishing season for nontrawl vessels with limited entry permits has been progressively shorter each year for the past several years as a result of shrinking harvest guidelines and increased fishing effort.

Competition for the limited resource has reached critical levels, and the Council has considered several approaches to addressing the major problems. The 1995 season is expected to be the shortest on record, approximately 7 days. Despite the fact that the number of nontrawl limited entry "A" licenses is limited to 237, only 131 landed sablefish during 1994, leaving an additional 106 permits that represent latent effort that potentially could participate in future sablefish harvests.

In June 1995, the Council held a scoping meeting to solicit input from the industry and the public on future management of the nontrawl fisheries. Based on the results of the meeting, the Council is beginning the development of management options for the fishery. The range of options the Council will consider includes, but is not limited to, limiting participation in the sablefish fishery only to those permit holders with a past history of sablefish landings, differential cumulative trip limits based on fishermen receiving "points" for meeting certain qualifying criteria, a two-tier system of cumulative trip limits based on historical sablefish landings during particular qualifying time

periods, equal shares or cumulative trip limits, associating trip limits with permits and allowing use of more than one permit on a vessel, split seasons, and area management. The Council has previously considered individual transferable quota (ITQ) options, but has delayed, indefinitely, further consideration pending changes to the Magnuson Act.

Implementation of any management measures for the fishery may require preparation by the Council of an amendment to either or both the Pacific groundfish FMP or its implementing regulations. The Council will discuss these issues at its

August 1995 meeting in San Francisco, CA. In either event, publication of a proposed rule with a public comment period, NMFS' approval of the rule or FMP amendment, and publication of a final rule would be required.

As the Council considers management options, some permit holders who do not currently harvest sablefish with limited entry gear, and have never done so, may decide to enter the fishery for the sole purpose of establishing a record of making commercial landings of sablefish. When management authorities begin to consider limited access management regimes, this kind of speculative entry often is responsible for a rapid increase in fishing effort in fisheries that are already fully developed or overdeveloped. The original fishery problems, such as overcapitalization or overfishing, may be exacerbated by the entry of new participants. If management measures to limit participation or effort in the fishery are determined to be necessary, the Council is considering June 29, 1995, as the control date. Anyone entering the fishery after that date may

not be assured of future participation in the fishery if a management regime is developed and implemented that limits the number of participants in the fishery.

Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the sablefish fishery. Fishermen are not guaranteed future participation in the sablefish fishery, regardless of their date of entry or intensity of participation in the fishery before or after the control date under consideration. The Council may subsequently choose a different control date, or it may choose a management regime that does not make use of such a date. For example, on February 5, 1992 (57 FR 4394), NMFS published in the **Federal Register** a notice of control date informing fishermen that a vessel or individual entering the Pacific groundfish or Pacific halibut fisheries off the States of Washington, Oregon, and California, may be assigned a lesser priority for issuance and shares of ITQ shares in a potential ITQ-based limited access system. The Council may choose to give variably weighted consideration to fishermen in the fishery before and after the control date. Other qualifying criteria, such as documentation of commercial landings and sales, may be applied for entry. The Council may choose also to take no further action to control entry or access to the sablefish fishery, in which case the control date may be rescinded.

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

Dated: July 27, 1995.

**Richard B. Stone,**

*Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

[FR Doc. 95-18832 Filed 7-27-95; 3:08 pm]

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

### Animal and Plant Health Inspection Service

[Docket No. 95-059-1]

#### Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Corn

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

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Dekalb Genetics Corporation seeking a determination of nonregulated status for a corn line designated as B16 that has been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this corn line presents a plant pest risk.

**DATES:** Written comments must be received on or before October 2, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95-059-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 95-059-1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690-2817.

**FOR FURTHER INFORMATION CONTACT:** Dr. Keith Reding, Biotechnologist, Biotechnology Permits, BBEP, APHIS, Suite 5B05, 4700 River Road, Unit 147, Riverdale, MD 20737-1237; (301) 734-7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734-7601.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On May 25, 1995, APHIS received a petition (APHIS Petition No. 95-145-01p) from the Dekalb Genetics Corporation (Dekalb) of Mystic, CT, requesting a determination of nonregulated status under 7 CFR part 340 for a glufosinate tolerant corn line designated as B16. The Dekalb petition states that the subject corn line should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, corn line B16 has been genetically engineered with the *bar* gene isolated from *Streptomyces hygrosopicus* that encodes a phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into a plant cell, inactivates glufosinate, also known as phosphinothricin, the active ingredient in the herbicide Liberty®. The *bar* gene was introduced into the subject corn line by microprojectile bombardment and its expression is under the control of the 35S promoter derived from the plant pathogen cauliflower mosaic virus

and the *Agrobacterium tumefaciens* transcript 7 (Tr 7) 3' regulatory region. Dekalb's corn line B16 is currently considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogenic sources. The subject corn line has been evaluated in field trials conducted since 1991 under APHIS permits or notifications. In the process of reviewing the applications for field trials of the subject corn, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

This genetically engineered corn line is also currently subject to regulation by other agencies. The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. Plants that have been genetically modified for tolerance or resistance to herbicides are not regulated under the FIFRA because the plants themselves are not considered pesticides.

In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, the EPA must approve the new or different use. In

conducting such an approval, the EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 201 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984-23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Dekalb's corn line B16 and the availability of APHIS' written decision.

**Authority:** 7 U.S.C. 150aa-150jj, 151-167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 24th day of July 1995.

**Lonnie J. King,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95-18777 Filed 7-31-95; 8:45 am]

BILLING CODE 3410-34-P

### **Grain Inspection, Packers and Stockyards Administration**

#### **Opportunity for Designation in the Alton (IL), Columbus (OH), and Farwell (TX) Areas**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration (GIPSA).

**ACTION:** Notice.

**SUMMARY:** The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of Alton Grain Inspection Department (Alton), will end March 31, 1996; the designation of Columbus Grain Inspection, Inc. (Columbus), will end February 28, 1996; and the designation of Farwell Grain Inspection, Inc. (Farwell), will end January 31, 1996, according to the Act, and GIPSA is asking persons interested in providing official services in the Alton, Columbus, and Farwell areas to submit an application for designation.

**DATES:** Applications must be postmarked or sent by telecopier (FAX) on or before August 30, 1995.

**ADDRESSES:** Applications must be submitted to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202-690-2755, attention: Janet M. Hart. If an application is submitted by telecopier, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart, telephone 202-720-8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA' Administrator to designate a qualified applicant to provide official

services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

GIPSA designated Alton, main office located in Florissant, Missouri, to provide official inspection services under the Act on April 1, 1993; Columbus, main office located in Circleville, Ohio, to provide official inspection services under the Act on March 1, 1993; and Farwell, main office located in Farwell, Texas, to provide official inspection services under the Act on February 1, 1993.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Alton ends on March 31, 1996. The designation of Columbus ends on February 28, 1996, and the designation of Farwell ends on January 31, 1996.

The geographic area presently assigned to Alton, in the State of Illinois, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Calhoun, Jersey, and Madison (West of State Route 4 and North of Interstate 70 and 270) Counties.

The geographic area presently assigned to Columbus, in the States of Ohio and Michigan, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Ohio:

Bounded on the North by the northern Lucas County line east to Lake Erie; the Lake Erie shoreline east to the Ohio-Pennsylvania State line;

Bounded on the East by the Ohio-Pennsylvania State line south to the Ohio River;

Bounded on the South by the Ohio River south-southwest to the western Scioto County line; and

Bounded on the West by the western Scioto County line north to State Route 73; State Route 73 northwest to U.S. Route 22; U.S. Route 22 west to U.S. Route 68; U.S. Route 68 north to Clark County; the northern Clark County line west to State Route 560; State Route 560 north to State Route 296; State Route 296 west to Interstate 75; Interstate 75 north to State Route 47; State Route 47 northeast to U.S. Route 68 (including all of Sidney, Ohio); U.S. Route 68 north to U.S. Route 30; U.S. Route 30 east to State Route 19; State Route 19 north to Seneca County; the southern Seneca County line west to State Route 53; State Route 53 north to Sandusky County; the southern Sandusky County line west to State Route 590; State Route 590 north

to Ottawa County; the southern and western Ottawa and Lucas County lines.

In Michigan: those sections of Jackson, Lenawee, and Monroe Counties which are east of State Route 127 and south of State Route 50.

Columbus' assigned geographic area does not include the following export port locations inside Columbus' area which have been and will continue to be serviced by FGIS: The Andersons, Toledo and Maumee, Ohio; Cargill, Inc., Toledo and Maumee, Ohio; Countrymark Cooperative, Inc., Toledo, Ohio; and Burdick Grain, Huron, Ohio.

The geographic area presently assigned to Farwell, in the States of Arizona, New Mexico, and Texas, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Maricopa, Pinal, and Yuma Counties, Arizona. Bernalillo, Chaves, Curry, DeBaca, Eddy, Guadalupe, Lea, Quay, Roosevelt, San Miguel, Santa Fe, Tarrant, and Union Counties, New Mexico.

Bailey, Deaf Smith (west of State Route 214), Lamb (south of U.S. Route 70 and west of FM 303), and Parmer Counties, Texas.

Interested persons, including Alton, Columbus, and Farwell, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Alton specified geographic area is for the period beginning April 1, 1996, and ending January 31, 1999. Designation in the Columbus specified geographic area is for the period beginning March 1, 1996, and ending January 31, 1999. Designation in the Farwell specified geographic area is for the period beginning February 1, 1996, and ending January 31, 1999. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

**AUTHORITY:** Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 19, 1995

**Neil E. Porter**

*Director, Compliance Division*

[FR Doc. 95-18724 Filed 7-31-95; 8:45 am]

BILLING CODE 3410-EN-F

### Opportunity to Comment on the Applicant for the Northern Michigan Region

**AGENCY:** Grain Inspection, Packers and Stockyards Administration (GIPSA).

**ACTION:** Notice.

**SUMMARY:** GIPSA requests comments on the applicant for designation to provide official services in the Northern Michigan region.

**DATES:** Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by August 30, 1995.

**ADDRESSES:** Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202-690-2755. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart, telephone 202-720-8525.

#### SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 1, 1995, **Federal Register** (60 FR 28570), GIPSA asked persons interested in providing official services in the Northern Michigan region to submit an application for designation. There was one applicant. Michigan Grain Inspection Services, Inc. (Michigan), main office located in Marshall, Michigan, applied for the entire area specified in the June 1, 1995, **Federal Register**.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of this applicant. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicant written notification of the decision.

**AUTHORITY:** Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 19, 1995

**Neil E. Porter**

*Director, Compliance Division*

[FR Doc. 95-18723 Filed 7-31-95; 8:45 am]

BILLING CODE 3410-EN-F

### Designation for the Fremont (NE) and Titus (IN) Areas

**AGENCY:** Grain Inspection, Packers and Stockyards Administration (GIPSA).

**ACTION:** Notice.

**SUMMARY:** GIPSA announces the designation of Fremont Grain Inspection Department, Inc. (Fremont), and Titus Grain Inspection, Inc. (Titus), to provide official services under the United States Grain Standards Act, as amended (Act).

**EFFECTIVE DATES:** September 1, 1995.

**ADDRESSES:** Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart, telephone 202-720-8525

#### SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 1, 1995, **Federal Register** (60 FR 11069), GIPSA asked persons interested in providing official services in the geographic areas assigned to Fremont and Titus to submit an application for designation. Applications were due by March 31, 1995. Fremont and Titus, the only applicants, each applied for designation in the entire area they are currently assigned.

GIPSA requested comments on the applicant in the April 21, 1995, **Federal Register** (60 FR 19882). Comments were due by May 30, 1995. GIPSA received one comment by the deadline. The comment supported the designation of Titus.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Fremont and Titus are able to provide official services in the geographic areas for which they applied. Effective September 1, 1995, and ending August 31, 1998, Fremont and Titus are designated to provide official inspection services in the geographic areas specified in the March 1, 1995, **Federal**

**Register.** Interested persons may obtain official services by contacting Fremont at 402-721-1270 and Titus at 317-497-2202.

**AUTHORITY:** Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 19, 1995

**Neil E. Porter**

*Director, Compliance Division*

[FR Doc. 95-18726 Filed 7-31-95; 8:45 am]

**BILLING CODE 3410-EN-F**

### **Opportunity to Comment on the Applicants for the Amarillo (TX), Schaal (IA), and Wisconsin Areas**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration (GIPSA).

**ACTION:** Notice.

**SUMMARY:** GIPSA request comments on the applicants for designation to provide official services in the geographic areas currently assigned to Amarillo Grain Exchange, Inc. (Amarillo), D. R. Schaal Agency, Inc. (Schaal), and Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin).

**DATES:** Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by August 30, 1995.

**ADDRESSES:** Comments must be submitted in writing to Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36JHART]. ATTMAIL and FTS2000MAIL users may respond to !A36JHART. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202-690-2755, attention: Janet M. Hart. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Hart, telephone 202-720-8525.

#### **SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 1, 1995, **Federal Register** (60 FR 28570), GIPSA asked persons interested in providing official services in the geographic areas assigned to Amarillo, Schaal, and Wisconsin to submit an application for designation. There were four applicants: Amarillo and Schaal applied for designation to

provide official inspection services in the entire areas currently assigned to them; A. V. Tischer and Son, Inc. (Tischer), applied for the portions of Schaal's area that does not include the grain elevators that are located inside Schaal's area; and Wisconsin applied for designation to provide official inspection and Class X and Y weighing services in the entire area currently assigned to them.

GIPSA is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address. Comments and other available information will be considered in making a final decision. GIPSA will publish notice of the final decision in the **Federal Register**, and GIPSA will send the applicants written notification of the decision.

**AUTHORITY:** Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 19, 1995

**Neil E. Porter**

*Director, Compliance Division*

[FR Doc. 95-18725 Filed 7-31-95; 8:45 am]

**BILLING CODE 3410-EN-F**

### **AGENCY FOR INTERNATIONAL DEVELOPMENT**

#### **Loan Guarantees to Israel; Notice of Investment Opportunity**

The Government of Israel (the "GOI") wishes to select a lead managing underwriter for the structuring and sale of U.S. Agency for International Development ("USAID")-guaranteed loans. The USAID-guaranteed loans have been authorized by Public Law 102-391, and are being provided in connection with Israel's extraordinary humanitarian effort to resettle and absorb immigrants into Israel from the republics of the former Soviet Union, Ethiopia and other countries.

The legislation authorizes the guaranty by USAID of up to \$10 billion principal amount of loans over a five-year period, with a maximum of \$2 billion in loans, offered in one or more tranches, to be guaranteed in each of the five fiscal years. This Notice is in connection with the GOI's selection of managing underwriters for an offering contemplated to be made under the authorization for the current fiscal year.

The lead managing underwriter for the proposed transaction will be

selected through a competitive bid on the expected pricing date. In order to pre-qualify for participation in the competitive sale, potential bidders must demonstrate the requisite financial and technical capabilities by their responses to a Request for Proposals ("RFP"), which will be available from the GOI on or about July 28, 1995. Proposals must be submitted, in accordance with the RFP, by 5:00 p.m. on August 7, 1995. For information regarding the submission of proposals, please contact Mr. Eliahu Ziv-Zitouk, Chief Fiscal Officer, Ministry of Finance of the Government of Israel, 800 Second Avenue, New York, N.Y. 10017 (fax: 212/499-5715).

The GOI reserves the right to limit the number of firms that are eligible to submit bids to underwrite the proposed transaction, and to reject any or all bids. In order to be eligible for selection as a managing underwriter, an institution must be a member of the National Association of Securities Dealers, and otherwise meet the legal requirements for serving such role. All firms are encouraged to seek to prequalify, regardless of ethnic origin, race or gender.

The full repayment of the loans will be guaranteed by USAID. To be eligible for an USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 226 of the Foreign Assistance Act of 1961, as amended. Disbursements under the loans will be subject to certain conditions required of the GOI by USAID as set for in agreements between USAID and the GOI.

Additional information regarding USAID's responsibilities in this guaranty program can be obtained from the undersigned: Room 225, SA-2, 515 22nd Street NW., Washington, DC 20523-0235, Telephone: 202/663-2773.

Dated: July 27, 1995.

**Michael G. Kitay,**

*Assistant General Counsel, Agency for International Development.*

[FR Doc. 95-18906 Filed 7-31-95; 8:45 am]

**BILLING CODE 6116-01-M**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-588-815]

**Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Gray Portland Cement and Clinker From Japan**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The appeal period for the court decision in *Nihon Cement Co., Ltd. et al. v. United States*, Slip Op. 95-53 has expired. Accordingly, given that the decision was not appealed, the Department is amending its final determination of sales at less than fair value and order in the antidumping duty investigation of Gray Portland Cement and Clinker from Japan (Cement from Japan) in accordance with that decision.

**EFFECTIVE DATE:** August 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michelle Frederick or John Brinkmann, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, D.C., 20230; telephone (202) 482-0186 or 482-5288, respectively.

**BACKGROUND:** On March 28, 1995, in the case of *Nihon Cement Co., Ltd. et al. v. United States*, Slip Op. 95-53 (*Nihon*), the United States Court of International

Trade (CIT) affirmed the Department's redetermination on remand of the investigation of sales at less than fair value of Cement from Japan (56 FR 12156, March 22, 1991, as amended by 56 FR 21658, May 10, 1991). In that redetermination, the Department recalculated the deposit rates of Onoda Cement Co. (Onoda), Nihon Cement Co., Ltd. (Nihon), and the "All Others" rate. On May 10, 1995, the Department published notice of the court decision and the new rates (60 FR 24832, May 10, 1995). In that notice the Department stated that it must continue to suspend liquidation until a "conclusive" decision in this action is reached. Because none of the parties appealed the CIT's decision and the opportunity to appeal has expired, the Department is amending the rates calculated in the final determination and order. The new rates are: 70.52 for Onoda; 69.89 for Nihon; and 70.23 for "All Others". We will instruct Customs to continue to suspend liquidation, and collect cash deposits, at the new rates for Nihon and "All Others". The effective cash deposit rate for Onoda has been determined by a subsequent administrative review, and is therefore not affected by the recalculation of these rates.

Dated: July 25, 1995.

**Paul L. Joffe,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 95-18859 Filed 7-31-95; 8:45 am]

**BILLING CODE 3510-DS-P**

**Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

**BACKGROUND:** Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/255.22 (1993)), as amended (see Interim Regulations, 60 FR 25130 (May 11, 1995)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

**OPPORTUNITY TO REQUEST A REVIEW:** Not later than August 31, 1995, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

Antidumping duty proceedings	Period
AUSTRALIA: Corrosion-Resistant Carbon Steel Flat Products (A-602-803)	08/01/94-07/31/95
BELGIUM: Cut-to-Length Carbon Steel Plate (A-423-805)	08/01/94-07/31/95
BELGIUM: Industrial Phosphoric Acid (A-423-602)	08/01/94-07/31/95
BRAZIL: Cut-to-Length Carbon Steel Plate (A-351-817)	08/01/94-07/31/95
CANADA: Corrosion-Resistant Carbon Steel Flat Products (A-122-822)	08/01/94-07/31/95
CANADA: Cut-to-Length Carbon Steel Plate (A-122-823)	08/01/94-07/31/95
CANADA: Magnesium (A-122-814)	08/01/94-07/31/95
FINLAND: Cut-to-Length Carbon Steel Plate (A-405-802)	08/01/94-07/31/95
FRANCE: Corrosion-Resistant Carbon Steel Flat Products (A-427-808)	08/01/94-07/31/95
FRANCE: Industrial Nitrocellulose (A-427-009)	08/01/94-07/31/95
GEORGIA: Titanium Sponge (A-833-803)	08/01/94-07/31/95
GERMANY: Cold-Rolled Carbon Steel Flat Products (A-428-814)	08/01/94-07/31/95
GERMANY: Corrosion-Resistant Carbon Steel Flat Products (A-428-815)	08/01/94-07/31/95
GERMANY: Cut-to-Length Carbon Steel Plate (A-428-816)	08/01/94-07/31/95
ISRAEL: Industrial Phosphoric Acid (A-508-604)	08/01/94-07/31/95
ITALY: Grain Oriented Electrical Steel (A-475-811)	02/09/94-07/31/95
ITALY: Granular Polytetrafluoroethylene Resin (A-475-703)	08/01/94-07/31/95
ITALY: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished (A-475-603)	08/01/94-07/31/95
JAPAN: Acrylic Sheet (A-588-055)	08/01/94-07/31/95
JAPAN: Brass Sheet and Strip (A-588-704)	08/01/94-07/31/95
JAPAN: Corrosion-Resistant Carbon Steel Flat Products (A-588-826)	08/01/94-07/31/95
JAPAN: Certain High-Capacity Pagers (A-588-007)	08/01/94-07/31/95
JAPAN: Granular Polytetrafluoroethylene Resin (A-588-707)	08/01/94-07/31/95
KAZAKHSTAN: Titanium Sponge (A-834-803)	08/01/94-07/31/95
KOREA: Cold-Rolled Carbon Steel Flat Products (A-580-815)	08/01/94-07/31/95
KOREA: Corrosion-Resistant Carbon Steel Flat Products (A-580-816)	08/01/94-07/31/95
MEXICO: Cut-to-Length Carbon Steel Plate (A-201-809)	08/01/94-07/31/95
MEXICO: Gray Portland Cement and Clinker (A-201-802)	08/01/94-07/31/95
NETHERLANDS: Brass Sheet and Strip (A-421-701)	08/01/94-07/31/95
NETHERLANDS: Cold-Rolled Carbon Steel Flat Products (A-421-804)	08/01/94-07/31/95

Antidumping duty proceedings	Period
POLAND: Cut-to-Length Carbon Steel Plate (A-455-802) .....	08/01/94-07/31/95
ROMANIA: Cut-to-Length Carbon Steel Plate (A-485-803) .....	08/01/94-07/31/95
RUSSIA: Titanium Sponge (A-821-803) .....	08/01/94-07/31/95
SPAIN: Cut-to-Length Carbon Steel Plate (A-469-803) .....	08/01/94-07/31/95
SWEDEN: Cut-to-Length Carbon Steel Plate (A-401-805) .....	08/01/94-07/31/95
TAIWAN: Clear Sheet Glass (A-583-023) .....	08/01/94-07/31/95
THAILAND: Malleable Cast Iron Pipe Fittings (A-549-601) .....	08/01/93-07/31/94
THE PEOPLE'S REPUBLIC OF CHINA: Petroleum Wax Candles (A-570-504) .....	08/01/94-07/31/95
THE PEOPLE'S REPUBLIC OF CHINA: Sulfanilic Acid (A-570-815) .....	08/01/94-07/31/95
TURKEY: Acetylsalicylic Acid (Aspirin) (A-489-602) .....	08/01/94-07/31/95
UNITED KINGDOM: Cut-to-Length Carbon Steel Plate (A-412-814) .....	08/01/94-07/31/95
UKRAINE: Titanium Sponge (A-823-803) .....	08/01/94-07/31/95
UKRAINE: Uranium (A-823-802) .....	08/01/94-07/31/95
YUGOSLAVIA: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished (A-479-601) .....	08/01/94-07/31/95
Countervailing Duty Proceedings	
BELGIUM: Cut-to-Length Carbon Steel Plate (C-423-806) .....	01/01/94-12/31/94
BRAZIL: Cut-to-Length Carbon Steel Plate (C-351-818) .....	01/01/94-12/31/94
CANADA: Alloy Magnesium (C-122-815) .....	01/01/94-12/31/94
CANADA: Live Swine (C-122-404) .....	04/01/94-03/31/95
CANADA: Pure Magnesium (C-122-815) .....	01/01/94-12/31/94
FRANCE: Corrosion-Resistant Carbon Steel (C-427-810) .....	01/01/94-12/31/94
GERMANY: Cold-Rolled Carbon Steel Flat Products (C-428-817) .....	01/01/94-12/31/94
GERMANY: Corrosion-Resistant Carbon Steel (C-428-817) .....	01/01/94-12/31/94
GERMANY: Cut-to-Length Carbon Steel Plate (C-428-817) .....	01/01/94-12/31/94
ISRAEL: Industrial Phosphoric Acid (C-508-605) .....	01/01/94-12/31/94
KOREA: Cold-Rolled Carbon Steel Flat Products (C-580-818) .....	01/01/94-12/31/94
KOREA: Corrosion-Resistant Carbon Steel Plate (C-580-818) .....	01/01/94-12/31/94
MALAYSIA: Extruded Rubber Thread (C-557-806) .....	01/01/94-12/31/94
MEXICO: Cut-to-Length Carbon Steel Plate (C-201-810) .....	01/01/94-12/31/94
NEW ZEALAND: Low-Fuming Brazing Copper Rod and Wire (C-614-501) .....	08/01/94-12/31/94
SPAIN: Cut-to-Length Carbon Steel Plate (C-469-804) .....	01/01/94-12/31/94
SWEDEN: Cut-to-Length Carbon Steel Plate (C-401-804) .....	01/01/94-12/31/94
THAILAND: Certain Circular Welded Steel Pipes and Tubes (C-549-501) .....	01/01/94-12/31/94
UNITED KINGDOM: Cut-to-Length Carbon Steel Plate (C-412-815) .....	01/01/94-12/31/94
ZIMBABWE: Carbon Steel Wire Rod (C-796-601) .....	01/01/94-12/31/94
Suspension Agreements	
JAPAN: Erasable Programmable Read Only Memories (EPROMS) (C-588-505) .....	08/01/94-07/31/95

In accordance with sections 353.22(s) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) or 355.2(i) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to section 355.22(a) of the Department's Interim Regulations, an interested party, as defined in section 355.2(i)(2)-(6), must specify the individual producers or exporters covered by the order for which they are requesting a review. Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or exporters.

If the interested party intends for the Secretary to conduct an antidumping or countervailing duty review of an exporter (or a producer if that producer

also exports merchandise from other suppliers) which produced subject merchandise in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by August 31, 1995. If the Department does not receive, by August

31, 1995, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: July 26, 1995.

**Joseph A. Spetrini,**  
Deputy Assistant Secretary for Compliance.  
[FR Doc. 95-18860 Filed 7-31-95; 8:45 am]  
BILLING CODE 3510-DS-M

#### Intent To Revoke Countervailing Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke countervailing duty order.

**SUMMARY:** The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of August 1995.

**EFFECTIVE DATE:** August 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2786.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty order listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with § 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in §§ 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke this order pursuant to this notice, and no interested party (as defined in § 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the revocation effective January 1, 1995. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order pursuant to § 355.25(d)(4).

The order listed below is also subject to section 753 of the Act; however, any revocation pursuant to section 753 would be effective March 3, 1995, the date Zimbabwe acceded to the World

Trade Organization. As such, the requirements of section 753 do not affect the procedures for revocation under § 355.25(d)(4) of the regulations since the effective date of any revocation under the regulations would be January 1, 1995.

Countervailing duty order	
Zimbabwe: Wire Rod (C-796-601)	08/15/86 51 FR 29292

**Opportunity To Object**

Not later than the last day of August 1995, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under §§ 355.2 (i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: July 26, 1995.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 95-18861 Filed 7-31-95; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[I.D. 070795C]

**Marine Mammals and Endangered Species; Permits**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and Fish and Wildlife Service (FWS), Interior.

**ACTION:** Receipt of modification request for a scientific research permit (P771#65).

**SUMMARY:** Notice is hereby given that the National Marine Mammal Laboratory, 7600 Sand Point Way, NE., BIN C15700 Building 1, Seattle, WA

98115-0070 has requested a modification to permit no. 842 to take the marine mammals listed below for the purpose of scientific research.

**DATES:** Written comments must be received on or before August 31, 1995.

**ADDRESSES:** The modification request and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668 (907/586-7221);

Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700 Building 1, Seattle, WA 98115-0070;

Director, Southwest Region, NMFS, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802-4213; and

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, VA 22203 (703/358-2104).

Written data or views, or requests for a public hearing on this request, should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, Silver Spring, MD 20910, within 30 days of the publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Gary Barone (301-713-2289).

**SUPPLEMENTARY INFORMATION:** Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

The subject modification to permit no. 842, issued on June 2, 1993, (58 FR 32543) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act, (16 U.S.C. 1531-1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217-227).

The permit holder seeks authorization to extend the permit from the original expiration date of June 30, 1996 until June 30, 1999.

Dated: July 11, 1995.

**Eugene Nitta,**

*Acting Chief, Permits & Documentation  
Division, National Marine Fisheries Service.*

Dated: July 20, 1995.

**Maggie Tieger,**

*Chief, Branch of Permits, U.S. Fish and  
Wildlife Service.*

[FR Doc. 95-18851 Filed 7-31-95; 8:45 am]

BILLING CODE 3510-22-F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 301

[Docket No. 950106003-5070-02; I.D.  
072695A]

#### Pacific Halibut Fisheries; Area 2A Non- treaty Commercial Fishery Reopening

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

**ACTION:** Inseason action.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes an inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of the Pacific halibut stock in order to help sustain it at an adequate level in the northern Pacific Ocean and Bering Sea.

**EFFECTIVE DATE:** 8:00 a.m., through 6:00 p.m., local time, July 18, 1995.

**FOR FURTHER INFORMATION CONTACT:** Steven Pennoyer, 907-586-7221; William W. Stelle, Jr., 206-526-6140; or Donald McCaughran, 206-634-1838.

**SUPPLEMENTARY INFORMATION:** The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by NMFS (60 FR 14651, March 20, 1995). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the

restrictions and requirements established therein.

#### Inseason Action

##### 1995 Halibut Landing Report Number 9

Area 2A Non-treaty Commercial Fishery to Reopen

The July 5 fishing period in Area 2A resulted in a catch of 9.07 metric tons (mt) (20,000 lb), leaving 32.22 mt (71,052 lb) in the commercial catch limit. Although 350 commercial licenses were issued in Area 2A, very few vessels participated in the July 5th opening, resulting in a low catch. The total catch limit remaining, including the "rolled-over" amount from the salmon troll fishery, is 387.89 mt (85,157 lb).

Area 2A will reopen on July 18 for 10 hours from 8:00 a.m. to 6:00 p.m. local time. The fishery is restricted to waters that are south of Point Chehalis, WA (46°53'18" N. lat.) under regulations promulgated by NMFS. Fishing period limits as indicated in the following table will be in effect for this opening.

Vessel class		Fishing period limit (lb)	
Length	Letter	Dressed, head-on	Dressed, head-off*
0-25 .....	A	225	200
26-30 .....	B	240	210
31-35 .....	C	380	335
36-40 .....	D	1,050	925
41-45 .....	E	1,130	995
46-50 .....	F	1,350	1,190
51-55 .....	G	1,510	1,330
56+ .....	H	2,275	2,000

\*Weights are after 2 percent has been deducted for ice and slime if fish are not washed prior to weighing.

The appropriate vessel length class and letter is printed on each halibut license.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight, although fishermen are reminded that regulations require that all halibut from Area 2A be landed with the head on.

The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and fine.

Dated: July 26, 1995.

**Richard W. Surdi,**

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

[FR Doc. 95-18850 Filed 7-31-95; 8:45 am]

BILLING CODE 3510-22-W

## International Trade Administration

### Intent to Revoke Antidumping Duty Orders and Findings and to Terminate Suspended Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty orders and findings and to terminate suspended investigations.

**SUMMARY:** The Department of Commerce (the Department) is notifying the public of its intent to revoke the antidumping duty orders and findings and to terminate the suspended investigations listed below. Domestic interested parties who object to these revocations and terminations must submit their comments in writing no later than the last day of August 1995.

**EFFECTIVE DATE:** August 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michael Panfeld or the analyst listed under Antidumping Proceeding at: Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482-4737.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Department may revoke an antidumping duty order or finding or terminate a suspended investigation if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke the following antidumping duty orders and findings and to terminate the suspended investigations for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months:

##### Antidumping Proceeding

France  
Industrial Nitrocellulose  
A-427-009  
48 FR 36303  
August 10, 1983  
Contact: David Dirstine at (202) 482-4033

Georgia  
Titanium Sponge  
A-833-803  
33 FR 12138  
August 28, 1968  
Contact: David Genovese at (202) 482-4697

Japan  
Acrylic Sheet  
A-588-055  
41 FR 36497  
August 30, 1976  
Contact: Kim Moore at (202) 482-0090

Japan  
Brass Sheet & Strip  
A-588-704  
53 FR 30454  
August 12, 1988  
Contact: Chip Hayes at (202) 482-5047

Japan  
High Capacity Pagers  
A-588-007  
48 FR 37058  
August 16, 1983  
Contact: Charles Riggle at (202) 482-0650

Taiwan  
Clear Sheet Glass  
A-583-023  
36 FR 16508  
August 21, 1971  
Contact: Kim Moore at (202) 482-0090

Thailand  
Malleable Pipe Fittings  
A-549-601  
52 FR 37351  
August 20, 1987  
Contact: Carlo Cavagna at (202) 482-4851

The People's Republic of China  
Petroleum Wax Candles  
A-570-504  
51 FR 30686  
August 28, 1986  
Contact: Valerie Turoscy at (202) 482-0145

Yugoslavia  
Tapered Roller Bearings  
A-479-601  
52 FR 30417  
August 14, 1987  
Contact: Wendy J. Frankel at (202) 482-0367

If no interested party requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, and no domestic interested party objects to the Department's intent to revoke or terminate pursuant to this notice, we shall conclude that the antidumping duty orders, findings, and suspended investigations are no longer of interest to interested parties and shall proceed with the revocation or termination.

#### Opportunity to Object

Domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping duty orders and findings or to terminate the

suspended investigations by the last day of August 1995. Any submission to the Department must contain the name and case number of the proceeding and a statement that explains how the objecting party qualifies as a domestic interested party under § 353.2(k)(3), (4), (5), and (6) of the Department's regulations.

Seven copies of such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, D.C. 20230. You must also include the pertinent certification(s) in accordance with § 353.31(g) and § 353.31(i) of the Department's regulations. In addition, the Department requests that a copy of the objection be sent to Michael F. Panfeld in Room 4203. This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1995.

**Joseph A. Spetrini**,  
*Deputy Assistant Secretary for Compliance.*  
[FR Doc. 95-19035 Filed 7-31-95; 8:45 am]  
BILLING CODE 3510-DS-P

#### CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 95-C0014]

#### Provisional Acceptance of a Settlement Agreement and Order

In the matter of Terri Treat, Individually and as the sole proprietor of Clouds d/b/a, Cotton Cloud Futon corporation.

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13. Published below is a provisionally-accepted Settlement Agreement with Cotton Cloud Futon corporation.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 16, 1995.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should sent written comments to the Comment 95-C0014, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0626.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: July 26, 1995.

**Sadye E. Dunn**,  
*Secretary.*

In the matter of Terri Treat, individually and as the sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation.

[CPSC Docket No. 95-C0014]

#### Complaint; Nature of Proceedings

Pursuant to the provisions of the Flammable Fabrics Act, as amended, (15 U.S.C. 1191 *et seq.*; hereinafter the "FFA"); the Federal Trade Commission Act, as amended, (15 U.S.C. 41 *et seq.*; hereinafter, the "FTCA"); and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, as amended), 16 CFR part 1632 (hereinafter, the "Mattress Standard"), the Consumer Product Safety Commission having reason to believe that Terri Treat, individually and as the sole proprietor of Clouds DBA, Cotton Cloud Futon Corporation hereinafter, "Respondent"), 1916 N.E. Broadway, Portland, OR 97232, has violated the provisions of said Acts; and further, it appearing to the Commission that a proceeding by it in respect those violations would be in the public interest, therefore, it hereby issues its Complaint stating its charges as follows:

1. Respondent Terri Treat is the sole proprietor of Clouds DBA, Cotton Cloud Futon Corporation, 1916 N.E. Broadway, Portland, OR 97005; and in that capacity, is responsible for the acts, practices, and policies of Clouds DBA, Cotton Cloud Futon Corporation.

2. Respondent is now and has been engaged in the manufacturing for sale, sale, and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and has sold or delivered after sale or shipment in commerce, as the term "commerce" is defined in section 2(b) of the FFA, 15 U.S.C. 1191(b), futon mattresses described as follows: (a) All cotton, (b) cotton-foam core, (c) poly-cotton, (d) poly-cotton foam core, (e) wool-cotton, (f) wool-cotton foam core, (g) wool-poly/cotton, (h) wool-poly/cotton foam core, (i) infant, (j) arland feather bed, and (k) 100% recycled dacron.

3. Each futon mattress identified in paragraph 3 of the complaint is intended or promoted for sleeping upon.

4. Each futon mattress identified in paragraph 3 of the complaint is, therefore:

(a) A "mattress" within the meaning of § 1632.1(a) of the Mattress Standard (FF 4-72, as amended), 1632.1(a); and

(b) An "interior furnishing" and a "product" as these terms are defined in sections 2 (e) and (h) of the FFA, as amended, 15 U.S.C. 1191 (e) and (h).

5. Respondent is subject to, and has failed to comply with, the Mattress Standard in that:

(a) Respondent failed to do prototype testing of the ticking substitution procedure required by § 1632.3 or 1632.6 of the Mattress Standard, 16 CFR 1632.3 or 1632.6.

(b) Respondent failed to maintain the manufacturing or test specifications or test records, ticking substitution specifications or test records, or other records required by § 1632.31 (c)(1) or (c)(5) and (c)(6), 16 CFR 1632.31 (c)(1) or (c)(5) and (c)(6).

6. The acts by Respondent set forth in paragraph 5 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under the FTCA, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desist order may be issued against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

#### Relief Sought

7. The staff seeks issuance of a cease and desist order against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the \_\_\_\_\_ day of \_\_\_\_\_, 1995.

By direction of the Commission:

Dated: \_\_\_\_\_

#### David Schmeltzer,

*Assistant Executive Director, Office of Compliance and Enforcement.*

In the matter of Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation.

#### [CPSC Docket No. 95-C0014]

#### Consent Order Agreement

Terri Treat, individually, and as the sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation (hereinafter, "Respondent"), enters into this Consent Order Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission (hereinafter, "Commission") pursuant to the procedures for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.13.

This Agreement and Order are for the sole purpose of settling allegations of the staff (1) that Respondent violated section 3(a) of the Flammable Fabrics Act (FFA), as amended, 15 U.S.C. 1192(a) and the Standard for the Flammability of Mattresses and Mattress Pads, as amended, 16 CFR part 1632 (FF 4-72) (hereinafter, the "Mattress Standard"), as more fully set forth in the Complaint accompanying this Agreement; and (2) that Respondent knowingly violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a) and the Mattress Standard.

#### Respondent and the Staff Agree

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following Acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*),

*Flammable Fabrics Act (15 U.S.C. 1191 et seq.)*, and the Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Terri Treat is the sole proprietor of Clouds DBA, Cotton Cloud Futon Corporation, 1916 N.E. Broadway, Portland, OR 97005; and in that capacity is responsible for the acts, practices, and policies of Clouds DBA, Cotton Cloud Futon Corporation.

3. Respondent is now and has been engaged in one or more of the following: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, as amended, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

4. Respondent denies the allegations of paragraphs 1 through 6 of the Complaint that Respondent violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a); and the Mattress Standard.

5. Respondent denies that she knowingly violated section 3(a) of the FFA, as amended, 15 U.S.C. 1192(a); and the Mattress Standard.

6. This Agreement is entered into for the purposes of settlement only and does not constitute a determination by the Commission that Respondent (a) violated or (b) knowingly violated the FFA and the Mattress Standard.

7. Respondent agrees to pay in settlement of the staff's allegations a civil penalty as set forth in the incorporated Order.

8. This Agreement does not constitute an admission by Respondent that a civil penalty is appropriate.

9. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

10. Upon final acceptance of this Consent Order Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights she may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the Flammable Fabrics Act as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

11. Violation of the provisions of the Order may subject Respondent to a civil and/or criminal penalty for each such violation, as prescribed by law.

12. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and the Commission may publicize the terms of the Consent Order Agreement.

13. Agreements, understandings, representations, or interpretations made outside the Consent Order Agreement may not be used to vary or to contradict its terms.

14. Upon acceptance of this Agreement, the Commission shall issue the following Order incorporated herein by reference.

Dated: June 26, 1995.

Respondent Terri Treat  
Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation

Commission Staff

#### David Schmeltzer,

*Assistant Executive Director, Office of Compliance.*

#### Eric L. Stone,

*Acting Director, Division of Administrative Litigation, Office of Compliance.*

Dated: July 5, 1995.

#### Dennis C. Kacoyanis,

*Trial Attorney, Division of Administrative Litigation, Office of Compliance.*

#### [CPSC Docket No. 95-C0014]

In the matter of Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation.

#### Order

Upon consideration of the Consent Order Agreement entered into between Respondent Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent Terri Treat, individually and as sole proprietor of Clouds, DBA, Cotton Cloud Futon Corporation; and it appearing that the Consent Order Agreement is in the public interest,

#### I

It is ordered that the Consent Order Agreement be and hereby is accepted.

#### II

It is further ordered that Respondent, and her successors and assigns, agents, representatives, and employees of the Respondent, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which is subject to and fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

#### III

It is further ordered that Respondent conduct prototype testing for each mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

#### IV

It is further ordered that Respondent prepare and maintain written records of the prototype testing specified in paragraph III of

this Order for each mattress design, including photographs of the tested mattresses, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

#### V

It is further ordered that Respondent prepare and maintain a written record of the manufacturing specifications of each mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

#### VI

It is further ordered that Respondent conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after prototype testing, in accordance with all applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

#### VII

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

#### VIII

It is further ordered that Respondent prepare and maintain a written record of the manufacturing specifications of any new foam core material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632.

#### IX

It is further ordered that Respondent prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72), as amended, 16 CFR part 1632, including:

- (a) Records to support any determination that a particular material other than ticking or tape edge did not influence ignition resistance;
- (b) Ticking certification test results or a certification from the ticking supplier; and
- (c) Records describing the disposition of all failing and rejected prototype mattresses.

#### X

It is further ordered that upon final acceptance of the Consent Order Agreement by the Commission, Respondent Terri Treat pay to the Commission a civil penalty in the amount of Ten Thousand And 00/100 Dollars (\$10,000.00) in two payments of Five Thousand And 00/100 Dollars (\$5,000.00) each. The first payment of Five Thousand And 00/100 Dollars (\$5,000.00) shall be due on July 1, 1995 or within twenty (20) days

after service of the Final Order of the Commission accepting this Consent Order Agreement (hereinafter, the "anniversary date"), whichever is later. The second payment of Five Thousand And 00/100 Dollars (\$5,000.00) shall be paid on July 1, 1996 or within one year of the anniversary date. Upon failure by Respondent to make payment or upon the making of a late payment by Respondent, the entire amount of the civil penalty shall be due and payable, and interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

#### XI

It is further ordered that Respondent shall within ninety (90) days after service upon her of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which she has complied with this Order.

#### XII

It is further ordered that for a period of three (3) years from the date this Order becomes final pursuant to 16 CFR 1605.13(e), Respondent notify the Commission at least thirty (30) days prior to any proposed change in the way Respondent does business which may affect her compliance obligations arising out of this Order.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register**.

So ordered by the Commission, this 26th day of July, 1995.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 95-18750 Filed 7-31-95; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Intelligence Agency, Scientific Advisory Board Closed Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

**DATES:** August 24, 1995 (830 to 400).

**ADDRESSES:** The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340-5100.

#### FOR FURTHER INFORMATION CONTACT:

Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340-1328 (202) 373-4930.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: July 27, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95-18816 Filed 7-31-95; 8:45 am]

BILLING CODE 5000-04-M

### Meeting of the DOD Advisory Group on Electron Devices

**AGENCY:** Department of Defense, Advisory Group on Electron Devices.

**ACTION:** Notice.

**SUMMARY:** Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0900, Tuesday, 8 August, 1995.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Warner Kramer, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: July 27, 1995.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95-18817 Filed 7-31-95; 8:45 am]

BILLING CODE 5000-04-M

## Department of the Navy

### Notice of Public Hearing for the Draft Environmental Impact Statement for the Disposal and Reuse of the Naval Air Station (NAS) Glenview, IL

Pursuant to Council on Environmental Quality Regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Proposed Disposal and Reuse of the NAS Glenview, Illinois.

In response to the recommendations of the 1993 Department of Defense Base Realignment and Closure Commission (BRAC-93) and to legislative requirements of the 1990 Base Realignment and Closure Act (Pub. L. 101-510), NAS Glenview, Illinois is to be closed and the property to be made available for disposal and reuse. The Navy has prepared a DEIS which addresses the environmental impacts of disposing NAS Glenview and of its potential reuse. The purpose of the DEIS is to assist the Secretary of the Navy in making a decision concerning the disposition of NAS property. It is the Navy's policy to adopt the community's redevelopment plan as its preferred alternative. The preferred alternative presented in the DEIS is the Consensus Reuse Plan approved by the Glenview Community Reuse Planning Group.

The preferred alternative for NAS Glenview is a combination of land uses which integrates the site with the Glenview community. It includes low and moderate density residential, a variety of public uses, retail, office/warehouse, light industrial, commercial, a sports, leisure, and entertainment component, a new Metra commuter rail station, and land devoted to open space and preservation of the existing golf course. The plan will generate approximately 5,100 jobs, slightly

increase the amount of wetlands, and increase local traffic in the area of the base.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held at the Glenview Village Hall, 1225 Waukegan Rd. on Thursday evening, August 17, 1995, from 7 p.m. until the end of public comment or 12 midnight.

The public hearing will be conducted by the Navy. Federal, state and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a legal stenographer; however, to ensure accuracy of the record, all statements should be submitted in writing. All statements, oral and written, will become a part of the public record of this study, and will be responded to in the Final Environmental Impact Statement. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit his/her comments to five minutes. If longer statements are to be presented, they should be summarized for the public hearing and submitted in long-form at the hearing or mailed to the address listed at the end of this announcement. All written comments must be postmarked by 5 September 1995, to become a part of the official record.

Additional information concerning this notice may be obtained by contacting Tom Burst (Code 064TB), Southern Division, Naval Facilities Engineering Command, PO Box 190010, North Charleston, South Carolina, 29419-9010, telephone (803) 743-0590.

Dated: July 25, 1995.

**L.R. McNees,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 95-18823 Filed 7-31-95; 8:45 am]

BILLING CODE 3810-FF-M

### Notice of Public Hearing for the Draft Environmental Impact Statement for the Disposal and Reuse of Naval Air Station (NAS) Dallas, TX

Pursuant to Council on Environmental Quality Regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the

Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Proposed Disposal and Reuse of NAS Dallas, Texas.

In response to the recommendations of the 1993 Department of Defense Base Realignment and Closure Commission (BRAC-93) and to legislative requirements of the 1990 Base Realignment and Closure Act (Pub. L. 101-510), NAS Dallas, Texas is to be closed and the property to be made available for disposal and reuse. Approximately 25% of NAS Dallas property is owned by the Navy; the remaining portion is leased to the U.S. Government by the City of Dallas, and will be returned to the city in accordance with the lease agreement. The Navy has prepared a DEIS which addresses the environmental impacts of disposing Navy-owned property at NAS Dallas and of its potential reuse. The purpose of the DEIS is to assist the Secretary of the Navy in making a decision concerning the disposition of NAS property. It is the Navy's policy to adopt the community's redevelopment plan as its preferred alternative. The preferred alternative presented in the DEIS is Industrial Aviation Use; other alternatives discussed are Industrial Park, Aviation Manufacturing Facility, General Aviation Use, Non-Aviation Mixed Use, and No Action.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and local libraries in Dallas and Grand Prairie. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held in Building 12 auditorium, NAS Dallas, 8100 West Jefferson Blvd., Dallas, TX on Wednesday evening, August 16, 1995, at 7 p.m. This meeting will be advertised in the Dallas and Grand Prairie area newspapers.

The public hearing will be conducted by the Navy. Federal, state and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a legal stenographer; however, to ensure accuracy of the record, all statements should be submitted in writing. All statements, oral and written, will become a part of the public record of this study, and will be responded to in the Final Environmental Impact Statement. Equal

weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit his/her comments to five minutes. All written comments must be postmarked by August 28, 1995 to become a part of the official record. Additional information concerning this notice may be obtained by contacting Darrel Molzan (Code 064DM), Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, South Carolina, 29419-9010, telephone (803) 743-0993.

Dated: July 25, 1995.

**L.R. McNeas,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 95-18824 Filed 7-31-95; 8:45 am]

BILLING CODE 3810-FF-M

## DEPARTMENT OF EDUCATION

[CFDA NO: 84.031G]

### **Endowment Challenge Grant Program; Extension of Closing Date For Receipt of Applications for New Awards For Fiscal Year 1995 Under the Endowment Challenge Grant Program**

The Department of Education published a notice in the **Federal Register** of June 10, 1994 (58 FR 50151) that established June 16, 1995 as the closing date for submission of applications under the Endowment Challenge Grant Program. The Department is reopening and extending the application period to August 31, 1995 to allow those institutions to apply that have only recently been declared eligible in response to the notice in the **Federal Register** of July 3, 1995 (60 FR 34523).

*Deadline for Transmittal of Applications:* August 31, 1995.

*Deadline for Intergovernmental Review:* Not applicable.

*Applications Available:* Applications will be mailed to institutions newly designated as eligible to apply for a grant under the Endowment Challenge Grant Program.

*For Information Contact:* Thomas Keyes, U.S. Department of Education, 600 Independence Ave., S.W., Suite 600-C, Portals Building, Washington, DC 20202-5337. Telephone: (202) 708-8833, or (202) 708-8866. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m and 8 p.m., Eastern time, Monday through Friday.

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:* 20 U.S.C 1065.

Dated: July 27, 1995.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 95-18876 Filed 7-31-95; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### **Federal Energy Regulatory Commission**

[Docket No. CP95-632-000]

### **Columbia Gas Transmission Corporation; Notice of Application**

July 26, 1995.

Take notice that on July 21, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314-1599, filed in Docket No. CP95-632-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for The Peoples Natural Gas Company (Peoples) which was authorized in Docket No. CP77-354,<sup>1</sup> all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to abandon a transportation service for Peoples which was being rendered under an agreement dated March 29, 1977, on file as Columbia's Rate Schedule X-59. The transportation agreement for Rate Schedule X-59 provides that Columbia receives into its Line 7917 in Fayette County, Pennsylvania up to 170 Mcf per day of natural gas from Peoples and transports this gas, less retainage, for the account of Peoples to Columbia Gas of Pennsylvania, Inc. at a delivery point also in Fayette County. Columbia states that volumes were last transported under Rate Schedule X-59 in May 1995 and that Peoples has agreed to the cancellation and termination of the transportation agreement for Rate Schedule X-59. Columbia further states

<sup>1</sup> See FPC 961 (1977).

that the proposed abandonment will not result in or cause any interruption, reduction, or termination of firm natural gas service presently rendered to any of its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 16, 1995, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-18760 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-129-001]

### **Kern River Gas Transmission Company; Notice of Refund Report**

July 26, 1995.

Take notice that on July 14, 1995, Kern River Gas Transmission Company (Kern River), filed its refund report made in compliance with the April 3, 1995 Stipulation and Consent

Agreement (Stipulation) in the above referenced docket and the Commission's May 5, 1995 order approving the Stipulation.

Kern River stated that on June 23, 1995, a total refund of \$662,500.00 was sent to the Kern River's firm transportation customers. Kern River apportioned the refund amounts based upon the actual contract demands in effect for each shipper for each month during the period March 1, 1993 through December 31, 1994. The report identifies each firm shipper, its aggregate contract demand during the referenced period, its resulting allocation percentage, and the refund amount.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 2, 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 the filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-18783 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CP95-628-000]**

**Koch Gateway Pipeline Company;  
Request Under Blanket Authorization**

July 26, 1995.

Take notice that on July 19, 1995, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP95-628-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to seek certificate authority to operate an existing delivery tap as a jurisdictional facility, under Koch Gateway's blanket certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway requests authorization to place into jurisdictional service a two-inch tap constructed under Section 311(a) of the NGPA and § 284.3(c) of the Commission's Regulations. Koch

installed a delivery tap to serve the Washington Parish Utilities (Washington Parish), a local distribution company, from Koch Gateway's Bogalusa 10-inch line, designated as Index 301-4, Washington Parish, Louisiana. Washington Parish reimbursed Koch Gateway approximately \$11,000 for the installation of the facilities. Certification of the facilities will provide Washington Parish with the additional flexibility of being able to use these facilities as a delivery point on Washington Parish's blanket transportation agreements with Koch Gateway.

Koch Gateway proposes to provide Section 311 transportation service to Washington Parish pursuant to § 284(B) of the Commission's Regulations. Once these facilities are certificated Koch Gateway will also provide jurisdictional transportation services pursuant to Koch Gateway's NNS rate schedule and its blanket transportation certificate issued in Docket No. CP88-6-000. Washington Parish estimates that its average daily requirements at this point are 5 MMBtu. The volume delivered to this new point under the firm agreement will be within the certificated entitlement of that existing service.

Koch Gateway further states it will operate the proposed facilities in compliance with 18 CFR Part 157, Subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-18779 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. OR95-7-000]**

**Longhorn Partners Pipeline; Notice of  
Petition for Declaratory Order**

July 26, 1995.

Take notice that on June 30, 1995, AXIS Gas Corporation (AXIS), pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 387.207(a)(2), filed a request for a declaratory order.

AXIS states that Longhorn Partnerships Pipeline (LPP), a partnership being formed by Axis, intends to convert certain crude oil pipeline facilities, which in conjunction with new pipeline facilities to be constructed, will provide common carrier transportation service for refined petroleum products from the Gulf Coast to El Paso, Texas—and through connecting pipelines into Arizona and New Mexico. The existing pipeline facilities proposed to be converted to this new pipeline are currently owned and operated by Exxon Pipeline Company (EPC). EPC currently moves crude oil on these facilities from West Texas (Crane, TX) to the Houston, Texas (Baytown, TX) area.

AXIS and its financial partner signed a letter of intent to purchase the pipeline facilities owned by EPC on June 9, 1995. That letter provides that a binding purchase and sale agreement must be entered into by a certain date. In the event that, before such date, the Commission has not declared that LPP will be allowed to include the full purchase price paid for these facilities in its cost-of-service calculations, AXIS will be unable to go forward with the contemplated project and the terms of the proposed agreement will expire. Notwithstanding that AXIS and its financial partner would continue to believe that the project would be commercially viable (apart from regulatory considerations), and notwithstanding the material benefits that the project would confer on shippers and consumers of petroleum products in the Southwest, AXIS and its financial partner would be unwilling to assume the regulatory risk that LPP would not be allowed to recover the purchase price paid to EPC. Accordingly, AXIS requests that this matter be handled on an expedited basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All

such motions or protests should be filed on or before August 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

Secretary.

[FR Doc. 95-18781 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER94-1384-001, ER94-1450-004, ER94-1685-001, ER94-1690-001, ER94-1691-002, ER95-393-001]

**Morgan Stanley Capital Group Inc., Coastal Electric Services Company, Citizens Lehman Power Sales, Engelhard Power Marketing, Inc., AIG Trading Corporation, CLP Hartford Sales, L.L.C.; Order Granting Rehearing in Part and Denying Rehearing in Part, Announcing Elimination of Power Marketer Business and Financial Arrangements Reporting Requirement, and Providing Guidance on Determining "Affiliation" Under Part II of the Federal Power Act**

Issued July 26, 1995.

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

**Background**

In a November 8, 1994 order issued in Docket No. ER94-1384-000, *Morgan Stanley Capital Group, Inc.*, 69 FERC ¶ 61,175 (1994) (November 8 Order), the Commission accepted for filing the application of Morgan Stanley Capital Group Inc. (MS Capital) for authorization to engage in wholesale electric energy transactions as a marketer at market-based rates. In the November 8 Order, the Commission denied MS Capital's request for relaxed reporting requirements and imposed the same filing and reporting requirements as those applicable to other power marketers. The Commission announced that it would reconsider these reporting requirements in a future generic proceeding applicable to all public utilities selling power at market-based rates. The Commission also denied MS Capital's request for waiver of the annual charge obligation and clarified that such obligation is applicable to all power marketers.

These cases present an appropriate vehicle for addressing the major issues in the November 8 Order. The

Commission will address other issues as they become ripe for resolution.

**Requests for Rehearing of November 8 Order**

On December 8, 1994, MS Capital filed a request for rehearing and modification of and for interim relief from the November 8 Order. MS Capital seeks relief from the November 8 Order in two respects. First, MS Capital asks the Commission to reverse its decision to require MS Capital to report business and financial arrangements between it (or an affiliate) and any entity that buys from or sells power to it, or at least to grant interim relief from that reporting requirement pending the outcome of the generic proceeding announced in the November 8 Order. MS Capital argues, among other things, that compliance with the requirement to report business and financial arrangements would be needlessly onerous and would inhibit the participation of experienced and highly qualified financial companies such as MS Capital in the markets for wholesale sales of electricity. MS Capital also questions whether the business and financial arrangements reporting requirement would provide the Commission and its staff with any meaningful data that could be used to detect reciprocal dealing. If the Commission does not reverse or stay application of the business and financial arrangements reporting requirement, MS Capital proposes several limitations to the scope of that requirement.

Second, MS Capital asks the Commission to reverse, or defer, its holding that power marketers are subject to the Commission's annual charge requirement. MS Capital asks the Commission, at a minimum, to defer its decision to collect annual charges from power marketers for a start-up (e.g., three-year) period "until power marketers are better established," after which time the Commission could evaluate "whether power marketers impose regulatory burdens on the Commission comparable to the burdens created by regulation of utilities with cost-based rates." MS Capital Rehearing Request at 3, 18.

On December 8, 1994, the Electric Power Monitoring Group and its individual members<sup>1</sup> filed a motion to intervene out-of-time and a request for rehearing of the November 8 Order. The Electric Power Monitoring Group seeks rehearing of the Commission's ruling

<sup>1</sup>The members of the Electric Power Monitoring Group joining in the pleading are Enron Power Marketing, Inc., Valero Power Services Company, Electric Clearinghouse, Inc., Intercontinental Energy Corporation, and KCS Energy Management Services, Inc.

requiring all power marketers to pay annual charges. The Electric Power Monitoring Group argues, among other things, that: (1) The Commission has not adequately justified its departure from past policy and precedent pursuant to which it previously declined to assess power marketers annual charges; (2) the Commission has limited jurisdiction over power marketers, which does not warrant subjecting them to the annual charge requirement; (3) the Commission does not devote significant resources to the regulation of power marketers as to justify subjecting them to the annual charge requirement;<sup>2</sup> and (4) subjecting power marketers to the annual charge requirement effectively discriminates against power marketers, which will not be able to recover the annual charges in a cost of service rate as do other public utilities subject to the annual charge requirement.

On December 8, 1994, Citizens Lehman Power Sales (CL Sales) also filed a motion for leave to intervene out-of-time and a request for rehearing of the November 8 Order. CL Sales asks the Commission, pending its generic proceeding, to drop the business and financial arrangements reporting requirement and to rely upon existing complaint procedures. If the Commission decides to maintain the reporting requirement in the interim, CL Sales asks the Commission to clarify that its decision to exclude transitory holdings in connection with investment or merchant banking, market-making, or asset management activities for purposes of determining generation dominance<sup>3</sup> also applies to the business and financial arrangements reporting requirement.

On December 9, 1994, Calpine Power Marketing Inc. (Calpine) filed a motion for leave to intervene out-of-time and a request for clarification of the November 8 Order. Like CL Sales, Calpine asks the Commission to clarify that the November 8 Order's exclusion of transitory holdings for purposes of assessing market power is equally applicable to reciprocal dealing concerns and thus also applies to the business and financial arrangements reporting requirement.

On July 7, 1995, MS Capital filed a motion for interim relief from the

<sup>2</sup>The Electric Power Monitoring Group argues that the Commission has failed to supply documentation to support its claim that it "can spend as much (if not more) time evaluating power marketer requests as it can other types of rate applications." 69 FERC at 61,697. The Electric Power Monitoring Group submits that such an analysis should be performed in a rulemaking proceeding of general applicability.

<sup>3</sup>See 69 FERC at 61,693.

business and financial arrangements reporting requirement and for prompt initiation and completion of the generic reporting requirements proceeding. MS Capital again asks the Commission, pending the outcome of the generic proceeding announced in the November 8 Order, to stay the business and financial arrangements reporting requirement or to limit its scope.

As we explain below, we will grant MS Capital's request for rehearing concerning the business and financial arrangements reporting requirement.<sup>4</sup> With the issuance of this order, we will no longer require MS Capital, or any power marketer with market-rate authority, to report business and financial arrangements between the marketer (or an affiliate of the marketer) and the entities that buy power from, sell power to, or transmit power on behalf of, the marketer. We also provide guidance in this order concerning the determination of affiliation under Part II of the Federal Power Act (FPA). Further, we will deny the requests for rehearing of our decision in the November 8 Order to apply the annual charge obligation to all power marketers.

#### Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1995), the Commission finds that the late interventions in this proceeding of CL Sales, the Electric Power Monitoring Group (and its individual members identified *supra* note 1), and Calpine will not prejudice the interests of any party and that good cause exists to permit the late interventions.

#### Business and Financial Arrangements Reporting Requirement

We will grant MS Capital's request for rehearing with regard to the business and financial arrangements reporting requirement. We will, effective as of the date of issuance of this order, no longer require power marketers to comply with that reporting requirement.

As the Commission explained in the November 8 Order, the Commission has required power marketers, as a condition of market rate approval, to report business and financial arrangements involving the marketer (or an affiliate of the marketer) and the entities that buy power from, sell power to, or transmit power on behalf of, the

marketer. 69 FERC at 61,694.<sup>5</sup> This reporting requirement was designed to assist the Commission in detecting reciprocal dealing.

We have given careful consideration to the concerns voiced by MS Capital (and other power marketers) that the costs and burdens of the business and financial arrangements reporting requirement far outweigh any possible benefits of such reporting. We find that MS Capital has raised valid concerns as to, among other things, the breadth of such reporting requirement, the "potentially impossible compliance burden" that the requirement imposes on marketers such as MS Capital that are "involved in numerous, disparate investments and business arrangements pertaining to thousands of different business matters,"<sup>6</sup> and the adequacy of the resulting data in detecting reciprocal dealing.

On this basis, we conclude that the business and financial arrangements reporting requirement imposes costs and burdens on power marketers (in terms of compiling and filing the data) as well as on the Commission (in terms of reviewing the data for the purpose of detecting reciprocal dealing) that are not justified by the potential benefits of such reporting. As a result, although the possibility of reciprocal dealing remains a valid concern, we do not believe that the business and financial arrangements reporting requirement is an effective means of detecting such behavior by power marketers. Rather, we believe that this matter can be appropriately addressed through a complaint mechanism.

In several orders issued in the other dockets that are captioned in this order, we indicated that the same reporting requirements and reporting options that the Commission imposed on MS Capital apply to other power marketers with market-based rate authority.<sup>7</sup> Consistent with our holdings in that regard, we clarify that our decision to eliminate the business and financial arrangements reporting requirement, effective on the date of issuance of this order, applies

not just to MS Capital, but to all other power marketers with authorization to engage in wholesale electric energy transactions at market-based rates, including, but not limited to, the power marketer applicants in Docket Nos. ER94-1450, ER94-1685, ER94-1690, ER94-1691, and ER95-393.<sup>8</sup>

#### Determination of Affiliation

In the November 8 Order, the Commission directed MS Capital, as a condition to authorization to transact at market-based rates, to report, among other things, affiliation with any entity that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. 69 FERC at 61,695. The Commission also directed MS Capital to revise its proposed rate schedule to eliminate all sales to affiliates at market-based rates.<sup>9</sup> Indicating that it has not yet determined affiliation under Part II of the FPA based on a bright line test, the Commission directed MS Capital, "until the Commission provides more guidance," to determine affiliation by applying the definition set forth in the Uniform System of Accounts. 69 FERC at 61,693 n.4. Under that definition, "affiliated companies" are defined as "companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the [subject] company." 18 CFR Part 101, Definitions, 5.

We take this opportunity to provide further guidance to MS Capital, and to all public utilities,<sup>10</sup> concerning the determination of affiliation under Part II of the FPA. The Commission believes that it is appropriate, in the move toward competitive bulk power markets, to adopt a definition of affiliation that

<sup>8</sup>Of course, the elimination of the business and financial arrangements reporting requirement should not be construed as affecting, in any way, a power marketer's obligation to file quarterly transaction reports. See *infra* note 15 (discussing the need for power marketers to file reports of jurisdictional transactions).

<sup>9</sup>The Commission noted that its decision in this regard was consistent with recent orders in which the marketer voluntarily agreed to a ban on sales to affiliates in order to ameliorate any possible concern for affiliate abuse. 69 FERC at 61,694 n.5. See Heartland Energy Services, Inc., 68 FERC ¶ 61,223 at 62,063 (1994) (*Heartland*); InterCoast Power Marketing Company, 68 FERC ¶ 61,248 at 62,133 (1994); LG&E Power Marketing Inc., 68 FERC ¶ 61,247 at 62,123 (1994). At the same time, the Commission explained that the general ban on sales to affiliates "is without prejudice to MS Capital filing in the future a specific proposal to sell power to an affiliate, which would provide the Commission with an opportunity to consider the possibility of affiliate abuse in the context of a specific transaction." 69 FERC at 61,694.

<sup>10</sup>See 16 U.S.C. 824(e) (1988).

<sup>5</sup>See, e.g., Louis Dreyfus Electric Power, Inc., 61 FERC ¶ 61,303 (1992). In Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993), *order on clarification and reh'g*, 66 FERC ¶ 61,244 (1994), the Commission limited the reporting requirement to the activities of any affiliates located or doing business in the United States, Puerto Rico, Canada, and Mexico.

<sup>6</sup>MS Capital Rehearing Request at 4, 5.

<sup>7</sup>See Engelhard Power Marketing, Inc., 70 FERC ¶ 61,250 (1995) (*Engelhard*); CLP Hartford Sales, L.L.C., 71 FERC ¶ 61,127 (1995) (*CLP Hartford*); AIG Trading Corporation, 71 FERC ¶ 61,148 (1995) (*AIG*); Citizens Lehman Power Sales, 71 FERC ¶ 61,149 (1995) (*Citizens Lehman*); Coastal Electric Services Company, 71 FERC ¶ 61,374 (1995) (*Coastal*).

<sup>4</sup>In light of our decision to eliminate altogether the business and financial arrangements reporting requirement for power marketers, we will dismiss as moot the requests of CL Sales and Calpine for rehearing and clarification, respectively, as to the scope of that requirement.

will provide greater certainty to all market participants. To this end, we announce that all non-EWG public utilities should, effective as of the date of this order, define "affiliate" as that term is used in the Commission's regulations regarding Standards of Conduct for Interstate Pipelines with Marketing Affiliates, for matters arising under Part II of the FPA.<sup>11</sup> Under § 161.2 of the Commission's regulations, a voting interest of 10 percent creates a rebuttable presumption of control for purposes of determining the existence of an affiliate relationship.

We recognize that Congress, in promulgating section 214 of the FPA,<sup>12</sup> as added by the Energy Policy Act of 1992, specified that the Commission must use the Public Utility Holding Company Act of 1935 (PUHCA) section 2(a) definition of "affiliate" (which, *inter alia*, contains a 5 percent voting interest test) for purposes of determining whether an electric utility is an affiliate of an EWG for purposes of evaluating EWG rates. Therefore, all EWG public utilities should, as of the effective date of this order, use the PUHCA section 2(a) definition of "affiliate" for matters arising under Part II of the FPA. However, we do not believe there is any reason for the Commission to adopt the same affiliation standard for public utilities that are not EWGs. Instead, we believe that the 10 percent rebuttable presumption that the Commission has adopted for determining affiliation of natural gas marketers with interstate pipelines is also appropriate for determining affiliation for non-EWG public utilities.

We reiterate here our holding in the November 8 Order that, for purposes of complying with the requirement to report affiliation with any entity that owns generation or transmission facilities or inputs to electric power production, MS Capital "need not report the mere transitory holdings of its affiliates in electric facilities and inputs." 69 FERC at 61,695. However, MS Capital must "report all of its own investments in electric facilities and inputs." *Id.* As we stated in the

<sup>11</sup> 18 CFR 161.2 (1995). Section 161.2(a) defines "affiliate" as "another person which controls, is controlled by, or is under common control with, such person." Section 161.2(b) states that "control (including the terms 'controlling,' 'controlled by,' and 'under common control with') . . . includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control."

<sup>12</sup> 16 U.S.C.A. 824m (West Supp. 1995).

November 8 Order, "there is no reason to ascribe generation ownership or control to MS Capital because of transitory holdings of electric utility stocks by Morgan Stanley<sup>13</sup> in connection with investment or merchant banking, market-making, or asset management activities." *Id.* at 61,693.

#### Annual Charge Requirement

We will deny rehearing of the requests of MS Capital and the Electric Power Monitoring Group for waiver of the Commission's annual charge requirement established in Part 382 of the Commission's regulations. We addressed this issue in detail in the November 8 Order, where we stated:

There is no reason that public utilities that are power marketers should not pay their fair share of the Commission's annual charges. Indeed, waiver of annual charges for power marketers would give them a benefit that other public utilities do not enjoy and would result in such utilities picking up those costs incurred by the Commission in regulating power marketers.

69 FERC at 61,697.<sup>14</sup>

Neither MS Capital nor the Electric Power Monitoring Group has presented any persuasive reasons for us to depart from this conclusion or to defer our decision to collect annual charges from power marketers. We disagree with MS Capital's and the Electric Power Monitoring Group's assertions that Commission jurisdiction over power marketers somehow is more "limited" than its jurisdiction over other FERC-jurisdictional public utilities, and their belief that the time and resources expended on regulation of power marketers are so insignificant as to compel waiver of the annual charge requirements for this entire class of public utilities (to the detriment of other classes of public utilities).<sup>15</sup>

<sup>13</sup> As used in the November 8 Order, the term "Morgan Stanley" refers to any and all Morgan Stanley Group Inc. affiliates other than MS Capital. See 69 FERC at 61,691.

<sup>14</sup> In several orders issued subsequent to the November 8 Order, we have denied rehearing of requests by other power marketers for waiver of the annual charge requirement. See, e.g., *Citizens Lehman*, 71 FERC at 61,475; *AIG*, 71 FERC at 61,473; *CLP Hartford*, 71 FERC at 61,409.

<sup>15</sup> For example, the Electric Power Monitoring Group incorrectly asserts that the quarterly transaction reports that power marketers are required to file with the Commission "are collected simply to maintain potential evidence in the event of a complaint being filed against a power marketer." Electric Power Monitoring Group Rehearing Request at 7. As the Commission has previously indicated, "the requirement that marketers file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter is necessary to ensure that contracts relating to rates and services are on file, as required by section 205(c) of the FPA, 16 U.S.C. 824d(c)

We also disagree with the contention of the Electric Power Monitoring Group that the Commission has not adequately justified its decision to overturn its earlier statement in *Howell Gas Management Company*, 40 FERC ¶ 61,336 (1987) (*Howell Gas*) that "annual charges are not occasioned if a utility is exempt from the requirements to file Form No. 1" (40 FERC at 62,025 n.8). As the Commission explained in the November 8 Order:

At the time of Commission action in *Howell Gas*, annual charges comprised only a small portion of the Commission's fee assessment program, while most of the Commission's revenues were collected as filing fees assessed on individual applications. Since then, the Commission has eliminated most of its filing fees and now recovers the bulk of its revenues as annual charges established in section 382 of the regulations. Therefore, a material change in circumstances has occurred subsequent to *Howell Gas*, and we specifically overturn our statement quoted above.

69 FERC at 61,697.

The Electric Power Monitoring Group objects that the Commission, in "conclusory fashion," determined that the shift in emphasis from filing fees to annual charges constitutes a "material change in circumstances" and "offered no analysis supporting" this determination.<sup>16</sup> We find this argument to be without support. We believe that the shift from filing fees to annual charges on its face constitutes a material change in circumstances. Moreover, as we made clear in the November 8 Order, the annual charges at issue in *Howell Gas* were assessed under the now-deleted section 36.1 of the Commission's regulations, the predecessor to current section 382. As we noted, "[a]t no time has any marketer successfully requested, or has the Commission granted, waiver of section 382." *Id.* at 61,697 n.12. In these circumstances, we believe that the Commission has amply explained its decision to subject power marketers to the annual charge requirement.

#### The Commission Orders

(A) The motions to intervene out-of-time of CL Sales, the Electric Power Monitoring Group, and Calpine are hereby granted.

(B) The requests for rehearing and clarification of the November 8 Order are hereby granted in part and denied in

(1988), and to allow the Commission to evaluate the reasonableness of the charges and to provide for ongoing monitoring of the marketer's ability to exercise market power." *Heartland*, 68 FERC at 62,065-66.

<sup>16</sup> Electric Power Monitoring Group Rehearing Request at 4.

part (or dismissed) as discussed in the body of this order.

By the Commission.

**Lois D. Cashell,**

Secretary.

[FR Doc. 95-18830 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-P

[Docket Nos. RP95-326-000 and RP95-242-000]

**Natural Gas Pipeline Company of America; Continuing Technical Conference**

July 25, 1995.

Take notice that the technical conference in this proceeding which was convened on July 13, 1995, will continue on Thursday, August 3, 1995, at 9:30 a.m., in the Commission Meeting Room at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. All interested persons and staff are permitted to attend.

**Lois D. Cashell,**

Secretary.

[FR Doc. 95-18784 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP95-188-001]

**NorAm Gas Transmission Company; Notice of Compliance Filing**

July 26, 1995.

Take notice that on April 14, 1995, pursuant to the Commission's order issued on March 30, 1995,<sup>1</sup> NorAm Gas Transmission Company (NorAm), tendered for filing materials supporting its claim of \$65 million in take-or-pay and contract reformation costs.

NorAm states that as required by the Order, slip op. at 4 and Ordering Paragraph (C), NorAm is submitting supporting documentation to enable the Commission to determine that the costs proposed for recovery relate to the settlements underlying the two previous filings in Docket Nos. RP93-88-000 and RP94-166-000, along with proof of NorAm's payment of the subject \$65 million.

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 18 CFR 385.211. All such protests should be filed on or before August 2, 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. 95-18782 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL95-64-000, et al.]

**Freedom Energy Company, et al.; Electric Rate and Corporate Regulation Filings**

July 25, 1995.

Take notice that the following filings have been made with the Commission:

**1. Freedom Energy Company**

[Docket No. EL95-64-000]

Take notice that on July 14, 1995, Freedom Energy Company, (Freedom) tendered for filing a Petition for Declaratory Ruling and Request for Expedition. Freedom states that it seeks a declaratory ruling that: (i) It will be eligible to apply under Transmission Service Tariff No. 1—Long-Term Firm Transmission Service ("Tariff No. 1") for transmission services of its purchased power over Public Service Company of New Hampshire's ("PSNH") transmission facilities to Freedom's distribution facilities for resale to Freedom's retail customers and (ii) as a New Hampshire public utility, Freedom will be eligible to apply for an order under Section 211 and 212(h) of the Federal Power Act (FPA) directing PSNH to provide Freedom with transmission services.

*Comment date:* August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

**2. United States Department of Energy Western Area Power Administration (Salt Lake City Area Office) v. Public Service Company of New Mexico )**

[Docket No. EL95-65-000]

Take notice that on July 18, 1995, the Western Area Power Administration (Western) of the United States Department of Energy tendered for filing a Complaint for Rate Relief from the Public Service Company of New Mexico (PNM). Western is seeking relief from the rate it presently pays PNM for the firm point-to-point transmission service under Amendment No. 1 to Contract No. 8-07-40-P0695.

*Comment date:* August 24, 1995, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before August 24, 1995.

**3. Northern Indiana Public Service Company**

[Docket No. ER95-1140-000]

Take notice that on July 5, 1995, Northern Indiana Public Service Company tendered for filing additional information to its May 31, 1995 filing in the above-referenced docket.

*Comment date:* August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

**4. PacifiCorp**

[Docket No. ER95-1146-000]

Take notice that on July 17, 1995, PacifiCorp tendered for filing an amendment in the above-referenced docket.

*Comment date:* August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

**5. Wisconsin Electric Power Company Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin)**

[Docket No. ER95-1357-000]

Take notice that on July 10, 1995, Wisconsin Electric Power Company (WEPCO), Northern States Power Company (Minnesota) NSP, and Northern States Power Company (Wisconsin) (NSP-W) (together, "the Applicants") jointly filed an "Amended and Restated Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company and Wisconsin Energy Company" ("Interchange Agreement").

Since 1970, NSP and NSP-W have coordinated the planning and operation of their combined electric system, and equalized the production and transmission costs of that system, under an Agreement to Coordinate Planning and Operations and Interchange Power and Energy.

On April 28, 1995, NSP and Wisconsin Energy Corporation, the parent company of WEPCO, entered into an agreement to merge. Under the merger agreement, NSP-W and WEPCO will merge to form Wisconsin. Following the merger, WEC and NSP will operate as subsidiaries of Primergy Corp., a registered holding company.

The principal purpose of the filing in this docket is to add WEC as a party to the current NSP Interchange Agreement and thereby permit the Primergy system to operate in the same coordinated manner, and share production and transmission costs on the same basis, as the NSP system currently does.

The Applicants have requested that this proceeding be consolidated with

<sup>1</sup> 70 FERC ¶ 61,368.

the Section 203 proceeding relating to approval of the proposed merger.

Copies of the filing were served on each of the state commissions that regulate the Applicants' electric rates and each of the Applicants' wholesale customers.

*Comment date:* August 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

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

[FR Doc. 95-18828 Filed 7-31-95; 8:45 am]  
BILLING CODE 6717-01-P

[Project No. 6901-026 West Virginia]

#### City of New Martinsville, WV; Notice of Availability of Draft Environmental Assessment

July 26, 1995.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to amend the license for the New Cumberland Hydroelectric Project. The application is to reduce the spillflow requirement at the project. The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The New Cumberland Hydroelectric Project is located on the Ohio River in Hancock County, West Virginia and Jefferson County Ohio.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426. Copies can also be obtained

by calling the project manager listed below.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Please affix Project No. 6901-026 to all comments. For further information, please contact the project manager, Ms. Monica Maynard, at (202) 219-2652.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-18831 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP95-597-000, et al.]

#### Natural Gas Pipeline Company of America, et al.; Natural Gas Certificate Filings

July 25, 1995.

Take notice that the following filings have been made with the Commission:

##### 1. Natural Gas Pipeline Company

[Docket No. CP95-597-000 of America]

Take notice that on July 3, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP95-597-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a rescheduling of deliveries service provided for The Peoples Gas Light and Coke Company (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that pursuant to a rescheduling of deliveries agreement dated August 3, 1977 between Natural and Peoples (Natural's Rate Schedule X-91), it rescheduled deliveries of up to 1,000,000 Mcf of sales gas sold to Peoples under Natural's Rate Schedule DMQ-1 during the period of March 1 through October 31 of each year and delivered such gas for the account of Peoples to Michigan Wisconsin Pipe Line Company, now known as ANR Pipeline Company (ANR), near Woodstock located in McHenry County, Illinois, at a daily rate of 5,000 Mcf together with an additional volume of gas for compressor fuel equal to five percent (5%) of the volume delivered.

Natural further states that by a letter of Peoples to Natural dated May 22,

1995, Peoples notified Natural that Natural's rescheduling of deliveries service for Peoples under the Agreement and Natural's Rate Schedule X-91 was no longer required. The service, it is said, is performed under the Agreement and Natural's Rate Schedule X-91, authorized in Docket No. CP77-515.

*Comment date:* August 15, 1995, in accordance with Standard Paragraph F at the end of this notice.

##### 2. Equitrans, Inc.

[Docket No. CP95-609-000]

Take notice that on July 11, 1995, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pa 15275-1102, filed in Docket No. CP95-609-000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to place in service certain facilities to permit the development and operation of additional storage capacity and deliverability at its existing Hunters Cave storage field, Green County, Pennsylvania and to provide incremental firm gas storage service to customers on a non-discriminatory open-access basis, effective immediately upon issuance for use during the 1995-96 winter heating season, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that through storage deliverability restoration activities undertaken pursuant to its Part 157 blanket certificate, the work performed has added 500,000 Mcf of working storage capacity to the Hunters Cave reservoir. Equitrans states further that Commission approval is sought to put the new and reworked wells in service in order to allow Equitrans to use the additional working gas created by these facilities during the 1995-96 winter heating season. Equitrans avers that the use of these facilities this winter would give Equitrans increased reliability and flexibility in operating its system for the benefit of all customers and would allow the storage capacity to be offered to those customers participating in an opening season for service to begin November 1, 1995.

Equitrans states that the incremental storage service would be offered on a non-discriminatory open-access basis pursuant to Part 284, Subpart G of the Commission's Regulations. The service, it is said, would be offered under Equitrans' existing Rate Schedule 115SS.

*Comment date:* August 15, 1995, in accordance with Standard Paragraph F at the end of this notice.

### 3. Texas Eastern Transmission Corporation

[Docket No. CP95-617-000]

Take notice that on July 14, 1995, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP95-617-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a new delivery point in Clinton County, Pennsylvania for National Fuel Gas Distribution (National Fuel), under Texas Eastern's blanket certificate issued in Docket No. CP82-535-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern states that cost of the facility would be approximately \$1,000,721 and that National Fuel would reimburse Texas Eastern for 50% of actual costs and expenses for the filter separator and its installation.

Texas Eastern states further that the proposed facilities would allow Texas Eastern to deliver an additional 45,000 Dth/d to National Fuel pursuant to Rate Schedule IT-1. The proposed delivery point, it is said, would have no effect on Texas Eastern's peak day or annual deliveries and would be accomplished without detriment or disadvantage to Texas Eastern's other customers.

*Comment date:* September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

### 4. NorAm Gas Transmission Company

[Docket No. CP95-620-000]

Take notice that on July 17, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95-620-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon facilities in Louisiana, under NGT's blanket certificate issued in Docket No. CP82-384-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to abandon Line RM-14, in its entirety, one 1-inch tap and 1-inch meter station, in Caddo Parish, Louisiana, which provide service to Athens Brick Plant. Also, it is proposed that a 1-inch inactive tap used to deliver gas to a rural customer served by Arkla. It is stated that both Arkla and the rural

customer have consented to the abandonment which will cost \$10,797.

*Comment date:* September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

### 5. Northern Natural Gas Company

[Docket No. CP95-629-000]

Take notice that on July 20, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP95-629-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install and operate a new delivery point located in Dodge County, Minnesota, to accommodate natural gas deliveries to Al-Corn Clean Fuels, Inc. (Al-Corn), under Northern's blanket certificate issued in Docket No. CP82-401-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the proposed delivery point will be used to accommodate natural gas deliveries to Al-Corn for use in its plant near Claremont, Minnesota. Northern explains that it will provide service to Al-Corn pursuant to Northern's existing transportation rate schedules and a transportation service agreement. Northern relates that the proposed volumes to be delivered to Al-Corn at the Al-Corn #1 TBS delivery point are 1,200 Mcf on a peak day and 438,000 Mcf on an annual basis. Northern estimates the cost of constructing the delivery point at \$135,000.

Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed without detriment or disadvantage to Northern's other customers.

*Comment date:* September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

### 6. Northern Natural Gas Company

Docket No. CP95-633-000

Take notice that on July 21, 1995, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed a request with the Commission in Docket No. CP95-633-000 pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the

Natural Gas Act (NGA) for authorization to construct and operate a new delivery point, authorized in blanket certificate issued in Docket No. CP82-401-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to install and operate a new delivery point, the Medford TBS #2, in Steel County, Minnesota to accommodate natural gas deliveries to Northern States Power-Minnesota (NSP-M). NSP-M has requested the construction of the proposed delivery point to serve a new customer, the Jerome Foods Plant. The estimated cost to construct the proposed Medford TBS #2 would be \$50,000.

*Comment date:* September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

### 7. Northwest Pipeline Corporation

[Docket No. CP95-635-000]

Take notice that on July 21, 1995, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158-0900, filed in Docket No. CP95-635-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a crossover tie-in between an existing meter station and Northwest's 24-inch mainline loop in Baker County, Oregon, under the blanket certificate issued in Docket No. CP82-433-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that the Durkee Meter Station in Baker County, Oregon, consisting of a 4-inch tap on Northwest's 22-inch mainline, two 1-inch regulators, a 4-inch turbine meter and appurtenances, was authorized to be constructed and operated in Docket No. CP88-67-000, with a maximum design delivery capacity of approximately 4,490 dt equivalent of natural gas per day. Northwest also states that the meter station was installed to permit Northwest to initiate interruptible transportation service for Ash Grove Cement Company.

Northwest proposes to construct and operate a 4-inch tap and appurtenances on its 24-inch mainline loop as an additional tie-in for the meter station in order to provide an alternative means of gas supply to the meter station when the 22-inch mainline, which normally serves the station, is out of service. Northwest proposes no change in the design capacity and delivery pressure of the meter station. Northwest estimates a

facility cost of \$32,436. Northwest indicates that, because this expenditure is necessary for Northwest to maintain existing services, it will not require any cost reimbursement from Ash Grove.

*Comment date:* September 8, 1995, in accordance with Standard Paragraph G at the end of this notice.

#### Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor,

the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95-18829 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-P

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-5267-4]

#### Supplement Under OMB Review

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

**ACTION:** Notice of Supplement Submission.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that a supplement to the Information Collection Request (ICR) abstracted in the **Federal Register** on June 30, 1995 has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR and the supplement describe the nature of the information collection and its expected cost and burden; where appropriate, they include the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** For further information, or for a copy of this ICR and/or the ICR supplement, contact Sandy Farmer at (202) 260-2740, please refer to EPA ICR #1587.03.

#### SUPPLEMENTARY INFORMATION:

#### Office of Air Quality Planning and Standards

*Title:* Clean Air Act, Title V—Operating Permits Regulations-Information Requirements Supplement, (EPA ICR #1587.03; OMB #2060-0234.)

*Abstract:* This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described in 40 CFR Part 70 establishing the minimum elements governing the development of State operating permit programs. Under this ICR, State and local government permitting authorities and stationary sources of air pollution will incur costs and burden. Permitting authorities have been working on their Title V programs since the promulgation of this original ICR on 7/1/92. EPA has completed the majority of reviews of Title V programs submitted by State and

local agencies. State and local authorities must provide EPA with the following: (1) Title V permit program; (2) permit applications and proposed permits; and (3) upon occurrence, applications for permit revisions and proposed revisions.

Under this ICR, owners and operators of affected sources must provide the State or local permitting authority with (1) An operating permit application every 5 years; (2) semi-annual submission of monitoring or recordkeeping data; (3) annual certification of compliance; and (4) upon occurrence, applications for permit revisions. Sources must maintain all records that are representative of compliance with the Title V program.

This ICR submission is only for a year extension to July 31, 1996. During this time, the Office of Air Quality Planning and Standards will finish the development of the new Title V Compliance rule. A final rule is expected to be promulgated by December 31, 1995. At that time, a new ICR will be submitted to OMB for review, containing the updated burden hour calculations.

The supplement includes burden estimates that will be placed on the public and State and local authorities during the period of July 31, 1995 through July 31, 1996.

**Burden Statement:** Due to the completion of the Title V permitting program development by State and local permitting authorities, this ICR supplement represents the actual public reporting burden over the next year.

*Respondents:* State and local governments and stationary sources.

*Estimated Total Annual Burden on Respondents:* 8,262,672 hours.

*Estimated Number of Respondents:* 34,324 respondents.

*Frequency of Collection:* Semi-annually, annually, upon occurrence and every 5 years.

Send comments regarding the burden estimate, or any other aspect of this information collection supplement, including suggestions for reducing burden, (please refer to EPA ICR #1587.03 and #2060-0234) to:

Sandy Farmer, EPA ICR #1587.03, U.S. Environmental Protection Agency, Regulatory Information Division (2136), 401 M Street, SW., Washington, D.C. 20460 and

Troy Hillier, OMB #2060-0243, Office of Management and Budget, Office of Information and Regulation Affairs, 725 17th Street, NW., Washington, D.C. 20503.

Dated: July 25, 1995.

**Joseph Retzer,**

*Regulatory Information Division.*

[FR Doc. 95-18865 Filed 7-31-95; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5268-5]

**Environmental Laboratory Advisory Board; Establishment**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Establishment of Advisory Committee.

**SUMMARY:** As required by Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App., EPA is giving notice of the establishment of an advisory committee. This committee will provide recommendations and comments on the process and procedures to develop and operate a national environmental laboratory accreditation program, and will be known as the "Environmental Laboratory Advisory Board" (ELAB). EPA has determined that the establishment of this advisory committee is in the public interest and will assist the Agency in performing its duties under its various statutes. Copies of the Committee's charter will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of FACA.

The membership of the ELAB has not yet been appointed by the Administrator. Consistent with the objectives of the National Environmental Laboratory Accreditation Conference and the requirements of FACA, the membership of the ELAB will be balanced among the Agency's various outside stakeholder interests. The first meeting of the ELAB will be announced separately in a **Federal Register** notice.

**FOR FURTHER INFORMATION:** Please contact Jeanne Hankins Mourrain, National Exposure Research Laboratory, (MD-77B), Research Triangle Park, NC 27711; telephone 919/541-1120; FAX 919/541-7953.

Dated: July 6, 1995.

**E. Ramona Trovato,**

*Director, Office of Radon and Indoor Air.*

[FR Doc. 95-18868 Filed 7-31-95; 8:45 am]

BILLING CODE 6560-50-P

[OPPTS-62149; FRL-4966-6]

**Lead Hazard Information Pamphlet; Notice of Availability**

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

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of the joint EPA and Consumer Product Safety Commission (CPSC) final Lead Hazard Information Pamphlet entitled "Protect Your Family From Lead In Your Home" (formerly entitled: "Lead-Based Paint: Protect Your Family") for public distribution. EPA developed this Pamphlet in response to Congressional concerns about the public's knowledge of lead-based paint hazards in the home. The Pamphlet was developed pursuant to section 406(a) of the Toxic Substances Control Act (TSCA), after consultation with the Centers for Disease Control and Prevention (CDC), the Department of Housing and Urban Development (HUD), and CPSC. After extensive product testing and public review, EPA, in consultation with cooperating Federal agencies, has developed a final draft and is beginning efforts to distribute the pamphlet to the general public.

**DATES:** Copies of the Lead Hazard Information Pamphlet will be available August 1995.

**ADDRESSES:** Single copies of the pamphlet may be obtained by calling the National Lead Information Clearinghouse (NLIC) at 1-800-424-LEAD or TDD: 1-800-526-5456, or the EPA Public Information Center at (202) 260-2080.

Multiple copies are available through the Government Printing Office (GPO). The public may order by calling the GPO Order Desk at (202) 512-1800, faxing (202) 512-2233, or writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Request the publication by title, "Protect Your Family From Lead In Your Home," and/or GPO stock number 055-000-00507-9. The price is \$26.00 per pack of 50 copies. The Pamphlet may be reproduced by an individual or corporation without permission from EPA or CPSC.

Organizations that wish to reprint may obtain negatives and/or black and white reproducible copy from NLIC at 1-800-424-LEAD. The pamphlet is available electronically, and may be accessed through the Internet at: [gopher.epa.gov](http://gopher.epa.gov).

**FOR FURTHER INFORMATION CONTACT:** For general information on lead poisoning prevention, call the National Lead Hotline at 1-800-LEAD-FYI or TDD: 1-800-526-5456, or the TSCA Hotline at (202) 554-1404 or TDD: (202) 554-0551. For specific questions on lead hazard information, call the National Lead Information Clearinghouse, 1-800-424-

LEAD or TDD: 1-800-526-5456. For technical information contact: Paula Moser, Environmental Protection Agency, Office of Pollution Prevention and Toxics, (7404), 401 M St., SW., Washington, DC 20460, Telephone: (202) 260-1865, Fax: (202) 260-0770, or Ken Giles, Consumer Product Safety Commission, Office of Public Affairs, 4330 East-West Highway, Bethesda, MD 20814, Telephone (301) 504-0580, Fax: (301) 504-0862.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under the Congressional mandate in section 406(a) of TSCA, EPA has developed a final lead hazard information pamphlet. Congress specifically required that the pamphlet: (1) Contain information regarding the health risks associated with exposure to lead; (2) provide information on the presence of lead-based paint hazards in Federally-assisted, Federally-owned, and target housing; (3) describe the risks of lead exposure for children under 6 years of age, pregnant women, women of childbearing age, persons involved in home renovation (of target housing), and others residing in a dwelling with lead-based paint hazards; (4) describe the risks of renovation in a dwelling with lead-based paint hazards; (5) provide information on approved methods for evaluating and reducing lead-based paint hazards and their effectiveness in identifying, reducing, eliminating, or preventing exposure to lead-based paint hazards; (6) advise persons how to obtain a list of contractors certified pursuant to TSCA section 402 in lead-based paint hazard evaluation and reduction in the area in which the pamphlet is to be used; (7) state that a risk assessment or inspection for lead-based paint is recommended prior to the purchase, lease, or renovation of target housing; (8) state that certain State and local laws impose additional requirements related to lead-based paint in housing and provide a listing of Federal, State, and local agencies in each State, including address and telephone number, that can provide information about applicable laws and available governmental and private assistance and financing; and (9) provide such other information about environmental hazards associated with residential real property as the Administrator deems appropriate.

EPA and HUD will distribute this pamphlet under several Congressional directives that will be implemented in separate rulemaking initiatives. Section 406(b) of TSCA requires that EPA promulgate regulations requiring each

person who performs a renovation of target housing for compensation to provide a lead hazard information pamphlet to the owner(s) and occupant(s) of such housing prior to commencing the renovation.

Section 1012 of the Residential Lead-Based Paint Hazard Reduction Act requires that HUD provide the pamphlet to purchasers and tenants of housing receiving Federal assistance. Section 1018 of that Act requires that EPA and HUD promulgate regulations requiring sellers or lessors of target housing to provide purchasers and lessees with the lead hazard information pamphlet.

These different regulations are currently under development and will be announced in the **Federal Register** when completed. In addition to its regulatory distribution, this pamphlet will be used by other Federal programs to support their educational and outreach goals and obligations. CPSC, a cosponsor of the pamphlet, will distribute the pamphlet to interested parties through its ongoing outreach efforts. This pamphlet will also become an information resource for families through the National Lead Information Center and other Federal information outlets.

## II. EPA's Development Process

### A. Interagency Consultation

Throughout development of the draft and final pamphlet, EPA has worked closely with other interested Federal agencies, including HUD, CDC, CPSC, and the 14 other agencies involved in the Federal Interagency Task Force on Lead Poisoning Prevention.

### B. Public Review and Comment

EPA developed a draft pamphlet and released it for a 60-day public comment period on March 9, 1994 (59 FR 11119), generating feedback from approximately 70 public commenters. These comments addressed stylistic, editorial, and policy concerns. All comments received have been placed into the public docket and are available for public review in the TSCA Nonconfidential Information Center (NCIC) from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC.

### C. Targeted Focus Tests and Interviews

EPA also conducted focus tests to obtain feedback on the pamphlet's readability within lower reading-level audiences. EPA conducted these tests during the spring and summer of 1994 in five cities: Mobile, AL, Haywood, CA, Washington, DC, Atlanta, GA, and

Chicago, IL. The tests consisted of moderated group discussions and one-on-one interviews which allowed EPA to probe for areas in the pamphlet that needed simplification, clarification, or rewording. EPA targeted lower reading-level audiences in recognition that such audiences typically have the greatest trouble benefiting from written health information, are least able to participate in traditional public review and comment periods, and may also be at special risk of lead hazard exposure. The focus tests proved valuable in providing comments on specific words, phrases, and graphics, and in providing overall impressions of the draft pamphlet's strengths and weaknesses. EPA has placed summaries and background materials from the focus tests into the public docket.

### D. Informal Public Meeting

On August 29, 1994, EPA held an informal public meeting in Washington, DC after publishing a notice in the **Federal Register** (59 FR 42043) and notifying all initial commenters. The meeting, which was moderated by an impartial facilitator, probed the attendants for comments on various aspects of a revised draft pamphlet using many of the same questions posed to focus group participants. Attendants at the meeting represented a wide range of views and backgrounds. A written verbatim transcription of the meeting is available for review in the public docket.

## III. Summary of Key Comments and Changes

During the public comment period, focus tests, and the public meeting, EPA received hundreds of comments and recommendations for improving the pamphlet, covering editorial, layout, graphics, and policy recommendations. EPA and consulting agencies have considered all comments in developing this revised pamphlet. A Response to Comments Document is available for review in the public docket. Below is a summary of some of the key points raised and changes to the pamphlet.

1. *Pamphlet layout/design/format.* EPA received many comments concerning the draft pamphlet's length, reading level and overall design. To respond to these concerns EPA has shortened the length of the pamphlet by 10 pages and completely redesigned the graphic look and layout of the final pamphlet. This redesign includes making better use of artwork, bold fonts, bullets, and sidebars to emphasize key messages and highlight important information.

EPA has also lowered the reading level of the pamphlet overall and has simplified the wording wherever possible. The new draft provides pages at the beginning and end of the pamphlet summarizing/emphasizing key points and messages and action items for reader consideration. Using these different techniques, EPA and CPSC believe that the revised pamphlet provides varying levels of detail to different audiences, depending on their education and areas of interest. At all levels of the pamphlets detail, however, EPA and CPSC have sought to reinforce the prevention theme of the document.

Recognizing that private reproduction of the pamphlet will be a key mechanism for distribution, EPA has resized the pamphlet to use a 5½ x 8½ format to facilitate photocopy reproduction using regular 8½ x 11 paper. In addition to providing color negatives to private entities that wish to reproduce the pamphlet in color, EPA is also releasing black and white camera-ready copy of the pamphlet available for photocopy and print reproduction. To further encourage such reproduction, EPA has also added space on the back cover for names and contact information of organizations that reprint and distribute the pamphlet.

2. *Role of qualified professionals in reducing lead hazards.* Several commenters suggested that the pamphlet address the role certified professionals should play in identifying and reducing lead hazards under future Federal regulations. Recognizing that the pamphlet will be distributed in advance of the completion of Federal training and certification standards for lead workers, the pamphlet focuses on the use of lead hazard reduction professionals "with special training for correcting lead problems" rather than requiring the use of certified contractors, which may not be available in many States. The pamphlet does, however, acknowledge that a certification program is being put into place and that persons are encouraged to use certified lead abatement contractors where possible.

3. *Detail of discussion of lead hazard evaluation and reduction techniques.* Feedback from public commenters and focus test participants indicated that much of the discussion of lead hazard evaluation and reduction methods was too detailed and technical to serve the pamphlet's general purpose. At the same time, many commenters recommended that the pamphlet include additional discussion of the difference between risk assessments and inspections as well as the differences between abatement and interim

controls. Recognizing that the concepts of risk assessment versus inspection and abatement versus interim controls are crucial distinctions for future hazard reduction efforts, EPA has added language clarifying these terms. However, EPA has also removed much of the more technical discussion of the specific steps involved in each activity. This revised language more effectively accomplishes the pamphlets goal of providing homeowners and occupants with an understanding of the key concepts and activities in reducing their risk of lead hazard exposure.

4. *Testing/screening children for lead.* EPA received considerable comment on appropriate recommendation language for childhood testing and screening. EPA has worked closely with CDC to analyze these comments and to develop revised testing and screening language that is fully consistent with CDC guidelines and also understandable for lay readers.

5. *Developing workable effective day-to-day cleaning measures.* A number of commenters suggested modifications to simple steps recommended for reducing lead hazards in housing. In particular, commenters identified potential issues related to recommending trisodium phosphate (TSP) or other high phosphate cleaning products for regular cleaning on all surfaces. In consultation with other Federal agencies, EPA has revised the recommendations to place the focus more on day-to-day types of home maintenance activities that can be effective at reducing, but not eliminating, lead hazard when conducted regularly.

6. *Comments not addressed.* EPA received many specific language changes and detailed policy recommendations that were not incorporated into the final pamphlet. During the pamphlet's revision, EPA, CPSC, and other participating agencies analyzed each recommendation in terms of the policy, technical, and editorial merit (and in light of the pamphlet's goals, target audience, and scope). As the whole document evolved, changes to the draft pamphlet frequently rendered some specific comments moot. The fact that a comment is not directly reflected in the final pamphlet does not necessarily indicate that the comment lacked merit. Rather, many comments were excluded since the comments no longer fit within the pamphlet's level of detail or scope.

#### IV. Alternative Languages

EPA recognizes that this lead hazard information may be important in some communities that have a limited ability to utilize information provided in

English. For that reason, EPA is currently developing a Spanish language version of the pamphlet. EPA and CPSC will announce the availability of the Spanish-language pamphlet in the **Federal Register** when available and immediately begin efforts to distribute the document through available channels.

In addition, the Agency is exploring avenues such as public-private partnerships for conducting translations into additional languages, such as Chinese and Korean. Organizations interested in working with EPA and CPSC to print and distribute the pamphlet, or to develop new pamphlet translations should write to: Paula Moser, Program Development Branch, Environmental Protection Agency (7404), 401 M St., SW., Washington, DC 20460.

Based on the response from interested organizations, EPA and CPSC will develop a plan for preparing additional translations.

#### List of Subjects

Environmental protection, Lead.

Dated: July 25, 1995.

**Lynn R. Goldman**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 95-18875 Filed 7-31-95; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-211042A; FRL-4968-9]

#### TSCA Section 21 Petition; Response to Citizens' Petition

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

**ACTION:** Notice; Response to citizens' petition.

**SUMMARY:** On April 19, 1995, EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620, signed by 24 environmental groups located in 10 western and mid-western States. The petition asserts that cement-producing plants that burn hazardous waste-derived fuel (WDF) in their kilns have higher concentrations of toxic metals in their cement end-products, and that these products therefore pose risks to end-users. The petition requests that EPA promulgate a rule under section 6 of TSCA requiring those producers who burn WDF to label their cement with a notice advising consumers of that fact, and cautioning them to avoid emitting or breathing the cement dust and to avoid direct contact.

The petition is denied on two grounds: (a) petitioners have not

substantiated the assertion that burning WDF increases risks posed to end-users of cement; and (b) for risk protection purposes, the label requested essentially duplicates labeling already required by the Occupational Safety and Health Administration (OSHA).

#### FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202-260-1024), Internet: TSCA-Hotline@epamail.epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Requirements

Section 21 of TSCA provides that any person may petition EPA to initiate proceedings for issuance of rules under sections 4, 6, and 8 of TSCA, or to issue orders under sections 5(e) or 6(b)(2) of TSCA. A section 21 petition must set forth facts which petitioners believe establish the need for the rules requested. EPA is required to grant or deny the petition within 90 days. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons in the **Federal Register**.

Within 60 days of denial, or if EPA fails to respond in 90 days, the petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking. For a petition for a new rule, the court must provide opportunity for the petition to be considered *de novo*. After hearing the evidence, the court can order EPA to initiate the requested action.

##### II. Approach to Reviewing Petition

Immediately following receipt of the petition, on April 19th, a Workgroup was established with representatives from EPA's Offices of Pollution Prevention and Toxics; Solid Waste and Emergency Response; and General Counsel. After receiving an unsolicited comment on the petition, on May 15th, the Agency decided to publish a Notice of Receipt (60 FR 30538, June 9, 1995), in order to afford all interested parties an opportunity to comment. In keeping with the 90 day deadline for reaching closure, the Workgroup briefed the Director of the Office of Pollution Prevention and Toxics on May 17th, and the Office Director subsequently presented the case to the Assistant Administrator for Prevention, Pesticides and Toxic Substances for a decision.

In response to the FR Notice of Receipt, comments were received from 8 individuals and 10 organizations. Several samples of current cement packaging and Material Safety Data Sheets (MSDSs) were also received. All comments were reviewed and considered by the Agency before reaching its final determination to deny the petition.

### III. Background

On April 19, 1995, EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620, signed by 24 environmental groups located in 10 western and mid-western States. The petition asserts that cement-producing plants that burn hazardous waste-derived fuel (WDF) in their kilns have higher concentrations of toxic metals in their cement end-products, and that these products therefore pose risks to end-users. The petition requests that EPA promulgate a rule under section 6 of the TSCA requiring those producers who burn WDF to label their products, in both English and Spanish, with the following label.

WARNING: THIS PRODUCT WAS MADE WHILE BURNING HAZARDOUS WASTE AND CONTAINS RESIDUALS OF THAT HAZARDOUS WASTE, INCLUDING INCREASED AMOUNTS OF TOXIC AND CARCINOGENIC METALS. AVOID EMITTING AND BREATHING DUST FROM THIS PRODUCT AND AVOID DIRECT CONTACT WITH THIS PRODUCT.

Cement is made by heating limestone, clay and other substances to very high temperatures in rotary kilns to form a granular material called "clinker", which is then cooled and ground up with gypsum to make cement powder. Cement kiln dust (CKD) waste is generated during the production of clinker. Releases to air, water and land from cement kilns are regulated under the Clean Air Act (CAA), Clean Water Act (CWA), and Resource Conservation and Recovery Act (RCRA). In 1992, 23 of the 111 domestic cement-producing plants burned WDF to supplement traditional fossil fuels (FF) (Ref. 3, p.7367). Air emissions and disposal of residues from kilns burning WDF are regulated under the Boiler and Industrial Furnace (BIF) regulations issued under RCRA.

While not central to the petition, CKD is tangentially related to petitioners' concerns. CKD is particulate matter, including toxic metals, that has been removed from kiln stack gases by air pollution control equipment. Once removed, CKD may be: (a) reintroduced into the kiln as feedstock; (b) used for such beneficial purposes as general

construction, waste stabilization, or as a substitute for lime and fertilizer in agriculture; or (c) simply disposed. Pursuant to RCRA section 8002(o), EPA published a *Report to Congress on Cement Kiln Dust* in 1993 in which the Agency concluded that although risks associated with CKD management are generally low, CKD could, under some circumstances, pose a danger to human health and the environment (Ref. 2). No decision was made at that time regarding the need to treat CKD as hazardous waste under RCRA Subtitle C.

In February of this year, pursuant to RCRA section 3001(b)(3)(C), the Agency published a *Regulatory Determination on Cement Kiln Dust* (60 FR 7366, February 7, 1995) in which it concluded that additional control of CKD is warranted, and that it would use RCRA Subtitle C and other authorities to control risks where appropriate (Ref. 3). Pending development of those regulations, CKD retains its exemption from regulation under Subtitle C pursuant to the Bevill Amendment contained in section 3001(b)(3)(A). The Regulatory Determination also stated that the Agency would propose exclusion of clinker as "derived-from" hazardous waste when CKD is reintroduced into the kiln as feedstock. Although the Bevill Amendment conditionally exempted CKD from regulation as hazardous waste under Subtitle C, the BIF regulations require kilns burning WDF to test their CKD to ensure that it is not significantly affected by the practice (40 CFR 260.112).

The activities described above address CKD waste disposal issues (the focus of both the Report to Congress and the Regulatory Determination). The petition, on the other hand, is primarily concerned about potential hazards to users posed by toxic metals introduced into cement via combustion of WDF. There are, however, four sources of toxic metals in cement: (1) the original feedstock; (2) CKD recycled as feedstock; (3) the fuel, both FF and WDF, used to heat the kiln; and (4) equipment and processes used, particularly refractory kiln bricks and the steel balls used to grind clinker (Ref. 1, p.50). The relative contribution of each of the four potential sources varies by an unknown extent from facility to facility and from time to time. The concentrations of metals in cement from any given plant are a function of complex interactions among all of these variables. A plant burning FF, using feedstock with a high metal content, and recycling CKD extensively, for example, might produce cement with high

concentrations of metals, while one burning WDF using the same feedstock, but discarding most of its CKD, might produce cement with lower concentrations.

### IV. Adverse Effects Associated with Cement

Based on information provided by petitioners, adverse effects associated with cement cited in the petition include: (a) cement eczema or cement dermatitis; (b) lung cancer; (c) asthma; and (d) a variety of other effects including nosebleeds, ulcers, respiratory distress and pneumoconiosis. Of these, cement dermatitis is the most common effect associated with cement, because the relationship between exposure to cement and dermatitis is well-established, and because the effect can occur at relatively low levels of exposure. Frank cement dermatitis is generally preceded by a number of years of skin irritation, abrasions, and cracks. Once established, cement dermatitis is chronic, even if there is no further exposure to cement. The dermatitis sensitization threshold is reported to be in the range of 10 to 15 parts per million (ppm) hexavalent chromium in cement.

### V. Analysis of Petition

As general background, petitioners argue that CAA, CWA and RCRA regulations are tightening restrictions on kiln-generated discharges of toxic metals to air, water and land, without restricting transfer of these metals into the cement itself. They contend that this incentive structure has increased the toxic metals content of cement. However, petitioners offer no evidence that concentrations of metals in cement have in fact increased. With respect to the objective of the petition, EPA notes that if restricting toxic metals from all compartments except the end-product is a problem, it would be a problem for all kilns, not simply those burning WDF. The essence of the petition is the more specific assertion that burning WDF increases the amount of toxic metals in cement.

The petition's assertion is based entirely upon evidence petitioners adduce from a 1992 study, published by the Portland Cement Association (PCA), that presented data on heavy metal concentrations found in both CKD and cement produced in facilities using FF only, and in facilities using WDF (Ref. 1). The study determined both "total" (acid soluble) and "leachable" (water soluble) concentrations of 12 metals (arsenic, antimony, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, silver and thallium) in both CKD and cement drawn from 97

North American kilns. The results were tabulated, among other ways, according to whether the originating kilns burned FF or WDF. Relevant findings of the study were that (a) the mean "total metal" concentration of only one metal, chromium, was statistically significantly higher in cement from kilns burning WDF than from kilns burning FF; (b) for the remaining 11, some of the "total metal" concentrations were higher and some lower, but none by statistically significant amounts; and (c) none of the "leachable metal" concentrations differed significantly in cement for any of the 12 metals. Evidence brought forth by petitioners therefore suggests only that burning WDF may increase concentrations of chromium in cement; no empirical case is made for metals in general.

Petitioners, however, have not established that burning WDF increases even chromium concentrations in cement. There are two flaws in the reasoning and evidence presented. The first has to do with the inability of the cited PCA study to identify the source of metal concentrations found in the cement samples. Although the study documented statistically significant

higher mean levels of total chromium (113 vs. 61.7 ppm) in cement from the kilns burning WDF, the authors of that study explicitly cautioned against attributing the difference to type of fuel burned:

Identification of the specific sources of the twelve chemical elements in the samples is beyond the scope of this study. Sources include fuel, raw materials, refractories, and processing equipment that comes into contact with the materials. For any particular kiln system, the concentration of these elements in cement and kiln dust is a function of the manufacturing process and the total metals input from all sources.

Because of widespread interest in the burning of alternate fuels in cement kilns, comparisons are presented in this data summary between kiln systems using waste fuels and coal, coke or natural gas. However, the reader should not infer that observed differences are necessarily attributable to the waste fuels, as that is only one of many sources of metals in this multivariate system. (Ref. 1; p.1 of Data Summary appended to reference)

Construction Technology Laboratories (CTL), the firm PCA used to conduct the study, reiterated this concern in an April 24, 1995 letter addressed to the Executive Director of the Cement Kiln

Recycling Coalition (CKRC), a trade association of cement producers that burn WDF. That letter, forwarded by CKRC to EPA on May 15, 1995, states in part, that "It was not the purpose of the study to determine the specific sources of trace elements in cements. The work on which this report is based did not include a complete material balance for each plant that submitted samples. Therefore, increases or decreases in trace metals concentrations cannot necessarily be attributed to fuel type."

The second point has to do with the substance selected by petitioners for discussion. They highlighted the statistically significant higher concentration of "total chromium" found by the PCA study in cement from kilns that burned WDF. The following table (derived from Ref. 1) also shows the concentrations of "leachable chromium" found in the same study. The mean difference in leachable chromium between kilns burning WDF and FF is not statistically significant. The evidence from the study cited by petitioners for increased chromium in kilns burning WDF is therefore mixed.

TOTAL AND LEACHABLE CHROMIUM LEVELS FOUND IN CEMENT PRODUCED BURNING WDF AND FF (PPM)

Levels	Total Chromium		Leachable Chromium	
	WDF Cement	FF Cement	WDF Cement	FF Cement
Minimum .....	33.3	24.6	3	<1.2
Mean .....	113	61.7	12	10
Maximum .....	422	214	24	31

This table also sheds light on any practical impact WDF might add to risks posed by chromium in cement. The mean concentrations of leachable chromium in cement produced with either WDF or FF are in the 10 to 15 ppm range — levels at which cement dermatitis could be expected if precautionary steps were not taken to avoid dermal contact. The maximum levels of leachable chromium detected in both types of cement are well above the upper end of that range. For total chromium, all values are well above the threshold levels. The risks are therefore potentially present in cement regardless of the type of fuel used. If these risks are considered sufficiently serious to warrant labeling, therefore, the precautionary warning sought by petitioners should arguably be affixed to all cement packaging, not simply to cement produced in kilns burning WDF.

The only study petitioners cite as demonstrating that burning WDF

increases levels of chromium (or any other metal) in cement more than burning FF, therefore, cannot confirm that assertion. It further suggests that even if the assertion were demonstrated, the magnitude of the increase in the amount of chromium, relative to the amount typically found in all cement, would not materially alter the pre-existing level of potential risk. In summary, the only evidence petitioners cite as evidence that burning WDF adds toxic metals to cement is a study which:

- Found that concentrations of "total chromium", not metals in general, were statistically significantly higher in cement produced in kilns burning WDF—but did not, and was not intended to, attribute that difference to WDF;

- Found no statistically significant difference in the concentration of leachable chromium in cement produced with and without burning WDF; and

- Found that burning both FF and WDF generates concentrations of chromium in cement at and above reported threshold levels for cement dermatitis.

EPA's analysis of (a) the material presented by petitioners, and (b) the PCA study<sup>1</sup>, has concluded that petitioners have not provided convincing evidence for their basic contention, or for the need for regulation under TSCA.

**VI. Other Evidence**

Other data are available that bear on the question of whether use of WDF adds metals to cement. EPA's *Regulatory Determination on Cement Kiln Dust*, although not concerned with cement, did compare metal

<sup>1</sup> The petition did not include the PCA study. The findings reported in the petition regarding the PCA study were drawn from data about that study cited in a secondary article supplied by petitioners. The caveats on use of the study's findings, contained in the original, did not appear in the secondary work.

concentrations found in CKD produced in plants burning FF and WDF. That determination noted that:

For many of the toxic metals, the concentrations detected in kiln dust were not significantly different whether the dust is generated from kilns that burn or do not burn hazardous waste. However, for lead, cadmium, and chromium, the mean concentrations found in CKD generated by kilns that burn hazardous waste is measurably higher than in CKD from those kilns that do not burn hazardous waste; conversely, thallium and barium concentrations are measurably higher in CKD from kilns that do not burn hazardous waste (Ref. 3, p.7369).

Again, the evidence is inconsistent; concentrations of some metals in WDF-generated CKD are higher, but others are lower. The continuing difficulty, however, is in establishing causality. As previously noted, the concentration of metals found in any given plant's cement results from complex interactions among several site-specific variables; in the absence of a study controlling for these variables, one cannot confidently attribute variations in metal concentrations among plants to any one source. There is one industry study, *A Comparison of Metal and Organic Concentrations in Cement and Clinker Made With Fossil Fuels to Cement and Clinker Made with Waste Derived Fuels* (Ref. 4), that determined the concentrations of metals in cement produced at a single facility that initially used WDF, and then switched temporarily to FF. Other operating conditions were held constant in both time periods, and 20 cement samples were taken in each. That study found detectable amounts of four metals. In one phase (pH=5 extract waters), the mean concentration of antimony was statistically significantly higher in the cement generated burning WDF, but there were no significant differences for either cadmium or chromium. In the second phase (pH=10 extract waters), the mean concentration of chromium in cement produced while burning WDF was statistically significantly lower than in cement produced burning FF—exactly opposite to the PCA findings. The differences for nickel were insignificant.

The totality of evidence, then, does not confirm that burning WDF in kilns materially increases concentrations of metals in cement. It also shows that decreased concentrations of metals can occur, and the net human health potential, if any, is simply unknown. In any event, based on the available information, the type of fuel burned in kilns appears to be a minor determinant of the concentration of metals in cement

relative to (a) the extent to which CKD is recycled as feedstock, and (b) the metals content of the original feedstock. Finally, the evidence indicates that all domestic<sup>2</sup> cement poses a potential problem to long-term users who fail to take precautionary steps to avoid exposures. Any labeling intended to warn users of this hazard should therefore be applied to all cement, not simply to cement produced with WDF.

#### VII. OSHA's Labeling Requirement

The current regulatory situation recognizes the need for comprehensive labeling of cement. Although petitioners state that the problems they discuss cannot be adequately addressed under other statutes, OSHA's Hazard Communication Standard (29 CFR 1910.1200) does, in fact, require cement manufacturers to label virtually all containers of their products with essentially all of the information petitioners want to convey, other than the fact that the cement was produced through burning of WDF. This requirement extends to all cement, not just that produced with WDF. Pertinent provisions of the Hazard Communication Standard require chemical manufacturers (cement producers, for this purpose, are considered chemical manufacturers) of products for which there is evidence of health hazard to label all containers of the product providing: (a) the identity of the chemical; (b) appropriate hazard warnings; and (c) the name and address of the manufacturer (29 CFR 1910.1200(f)). Manufacturers must also ensure that distributors and employers using the product are furnished with appropriate MSDS, and downstream wholesalers and retailers are required to ensure that these warnings are carried with the product through the distribution chain to the ultimate end-user. A typical cement bag label reads as follows:

##### CAUTION EYE AND SKIN IRRITANT

Contains Portland Cement (CAS No. 65997-15-1). Do not allow contact with eyes or skin. Contains concrete aggregates Sand/Gravel (CAS No. 14808-60-7). Avoid breathing dust—respirable Silica may cause serious lung problems.

Use gloves, goggles, dust masks, and waterproof protective clothing. If material gets into eyes, rinse immediately with clean water and seek prompt medical attention. If material gets onto skin or saturates clothing, rinse immediately and thoroughly with clean water. CONTACT WITH WET PORTLAND

<sup>2</sup>There is some evidence that the hexavalent chromium content of cement can be reduced by adding ferrous sulfate. Petitioners cite references indicating that Denmark has made it illegal to sell cement with more than 2 ppm CR (VI).

CEMENT MAY CAUSE SERIOUS SKIN BURNS."

EPA believes that the hazard communication label required by OSHA provides sufficient warning to users of cement to allow them to take appropriate steps to protect themselves from exposure to cement products.

#### VIII. Comments Received

EPA published a Notice of Receipt of the Petition in the *Federal Register* (60 FR 30538; June 9, 1995), in order to provide opportunity to comment to all interested parties. Comments were received from 8 individuals, all of whom supported the petition, and 10 organizations. Several samples of current cement packaging and MSDSs were also received. All comments were reviewed and considered by the Agency before reaching its final determination to deny the petition.

Six of the 10 organizations wrote in support of the petition. Of these, 3 were among the 24 signers of the petition itself; 1 is another environmental group; 1 is a general contractor; and 1, Rollins Environmental Services, operates hazardous waste incinerators. The Rollins submission included two studies bearing on the question of the contribution of WDF to metals in cement. The first study was a mass balance analysis conducted at Rutgers University with the support of the Association for Responsible Thermal Treatment (ARTT), an organization of some hazardous waste incinerator companies. That study models the operation of cement kilns, and concludes, among other things, that burning WDF could increase the metals content of cement. The second study is a risk assessment undertaken by ENVIRON Corporation, using the data generated by the Rutgers model, and a portion of the PCA data. These studies were reviewed by EPA, insofar as time permitted, but did not alter the Agency's decision on the petition because: (a) there is no apparent justification for substituting modeling data for the extensive empirical monitoring data available; (b) the model itself appears flawed in that a light weight aggregate kiln, rather than a cement kiln, was used in its development; (c) the model has only recently been developed, and has not yet been peer reviewed; and (d) the ENVIRON study is largely based upon the unpersuasive modeling results (Refs. 5 and 6).

The four organizations that wrote in opposition to the petition included the CKRC; the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers Helpers; LaFarge Corporation, a cement producer that

burns WDF; and Union Carbide Corporation, a company that uses cement kilns to handle wastes produced manufacturing petrochemicals. These commenters generally noted advantages that accrue from recovering energy from waste by burning it as fuel in kilns, asserted that petitioners had not provided sufficient evidence of increased risk, and cited the current regulatory requirement for labeling.

### IX. Disposition of Petition

Based upon (a) the lack of convincing evidence that WDF contributes materially to the hazards posed by cement; and (b) the fact that current OSHA regulations already require virtually everything petitioners request, other than a reference to WDF, the petition is denied.

### X. References

The following references were used in reviewing this petition:

1. Portland Cement Association. An Analysis of Selected Trace Metals in Cement and Kiln Dust, 1992.
2. USEPA. Report to Congress on Cement Kiln Dust. Office of Solid Waste and Emergency Response. USEPA 530-S-94-001, December 1993.
3. USEPA. Regulatory Determination on Cement Kiln Dust: Final Rule. Office of Solid Waste and Emergency Response. USEPA 60 FR 7366, February 7, 1995.
4. NSF. A Comparison of Metal and Organic Concentrations in Cement and Clinker made with Fossil Fuels to Cement and Clinkers Made with Waste Derived Fuels: Final Report. *NSF International*. November 13, 1995.
5. Review of Comments submitted by Rollins Environmental Services; memorandum from Oscar Hernandez to Edward Brooks, July 13, 1995.
6. Review of Rutgers' Model as Discussed in Submission by Rollins Environmental Services: June 26, 1995; memorandum from William A. Schoenborn to Edward Brooks, July 18, 1995.

### XI. Public Record

EPA has established a public record of those documents the Agency considered in reviewing this petition. The record consists of documents in the file designated by Docket Number OPPT-211042, located in the TSCA Public Docket Office. This Docket is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Nonconfidential Information Center, Rm. NEB-607, 401 M St., SW., Washington, DC 20460. The public record consists of all documents

in the OPPT file and all documents cited in the documents in that file.

### List of Subjects

Environmental Protection, hazardous waste.

Dated: July 24, 1995.

### Susan H. Wayland,

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 95-18871 Filed 7-31-95; 8:45 am]

BILLING CODE 6560-50-F

### [FRL-5268-3]

### Science Advisory Board Drinking Water Committee Open Meeting August 16-18, 1995

Under the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB) Drinking Water Committee (DWC) will meet Wednesday through Friday, August 16-18, 1995 at the Courtyards of Marriott, 2899 Jeff Davis Highway, Arlington, VA 22202, telephone (703) 549-3434. The meeting will take place from 9 am to 4:30 pm on August 16th, 8:30 am to 5 pm on August 17th and from 8:30 until approximately noon on August 18th. The meeting is open to the public and seating is on a first-come basis.

At this meeting, the Committee plans to: (1) Discuss potential activities for fiscal year 1996; (2) conduct a review of the Agency's drinking water distribution systems research; (3) conduct a review of the health significance of HPC bacteria; (4) receive briefings from the Agency's Offices of Water (OW) and Research and Development (ORD) on issues such as: (a) disinfection byproducts research plan, (b) regulatory reassessment, (c) ground water disinfection rule, (d) cooperative projects in risk assessment between EPA and ILSI, (e) microbial contaminants risk assessment, and (f) drinking water contaminant selection process. Some of these briefings are subject to change and other briefings may also be presented. As of the preparation date of this notice, the Committee has not been provided with any review materials. For further information on available materials and on the specific topics listed above, please contact Mr. Flaak, Designated Federal Official, at the numbers given below.

For copies of the agenda and other practical meeting information, please contact Ms. Mary Winston, Staff Secretary, telephone: (202) 260-6552; FAX: (202) 260-7118. For more detailed or technical information related to the meeting, please contact Mr. Robert

Flaak, Designated Federal Official, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at telephone: (202) 260-5133, fax: (202) 260-7118, or via the INTERNET at: FLAAK.ROBERT@EPAMAIL.EPA.GOV).

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak no later than August 10, 1995, in order to be included on the Agenda. Written statements of any length (at least 35 copies) may be provided to the Committee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes or less, at the Chair's discretion.

Dated: July 24, 1995.

### A. Robert Flaak,

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 95-18835 Filed 7-31-95; 8:45 am]

BILLING CODE 6560-50-P-M

### [FRL-5267-1]

### Transfer of Confidential Business Information to Contractors

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of transfer of data and request for comments.

**SUMMARY:** EPA will transfer Confidential Business Information (CBI) to its contractor SAIC, Inc., and its subcontractors: ICF Inc., DPRA and Kerr Associates Confidential Business Information (CBI) that has been or will be submitted to EPA under Section 3007 the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA is involved in activities to support, expand and implement solid and hazardous waste regulations.

**DATES:** Transfer of confidential data submitted to EPA will occur no sooner than August 11, 1995.

**ADDRESSES:** Comments should be sent to Regina Magbie, Document Control Officer, Office of Solid Waste (5305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

**FOR FURTHER INFORMATION CONTACT:** Regina Magbie, Document Control Officer, Office of Solid Waste (5305), U.S. Environmental Protection Agency,

401 M Street SW., Washington, DC 20460, 202-260-3410.

**SUPPLEMENTARY INFORMATION:**

**1. Transfer of Confidential Business Information**

Under EPA Contract 68-W4-0030, SAIC, Inc., and its subcontractors, will assist the Waste Management Division, Office of Solid Waste, by providing technical support for: establishing Land Disposal Restriction (LDR) treatment standards, the review of petitions for case-by-case extensions, to LDR treatment standards effective date, studies of RCRA waste information needs and the development of rules or reports pertaining to newly listed and identified wastes under the LDR program. SAIC, Inc., and its subcontractors, will need access to CBI submitted to the Office of Solid Waste to complete this work. Specifically, SAIC, Inc., and its subcontractors, need access to the CBI that EPA collected, under the authority of Section 3007 of RCRA, in Industry Studies Surveys and other studies of the following industries: mineral processing, organobromine production, carbamates production, wood preserving, dyes and pigments manufacturing, chlorinated aliphatics production, solvent users, petroleum refinery, paint production, cement kilns; and information on decharacterized ignitable, corrosive, reactive, and toxicity characteristic waste. SAIC, Inc., and its subcontractors, will use the information to assist EPA in the following: development of regulations; guidance documents; outreach materials and publications; collection and analysis of data; development and evaluation of waste prevention and management alternatives; and development and delivery of training programs.

In accordance with 40 CFR 2.305(h), EPA has determined that SAIC, Inc., and its subcontractors, require access to CBI submitted to EPA under the authority of RCRA to perform work satisfactorily under the above-noted contract. EPA is submitting this notice to inform all submitters of CBI of EPA's intent to transfer CBI to these firms on a need-to-know basis. Upon completing their review of materials submitted, SAIC, Inc., and its subcontractors, will return all CBI to EPA.

EPA will authorize SAIC, Inc., and its subcontractors, for access to CBI under the conditions and terms in EPA's "Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual." Prior to transferring CBI to SAIC, Inc. and its

subcontractors, EPA will review and approve their security plans and SAIC, Inc., and its subcontractors, will sign non-disclosure agreements.

Date: July 20, 1995.

**Elliott P. Laws,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 95-18862 Filed 7-31-95; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL MARITIME COMMISSION**

[Docket No. 95-11]

**Mar-Mol Co., and CopyCorp v. Sea-Land Service, Inc.; Notice of Filing of Complaint and Assignment**

Notice is given that a complaint filed by Mar-Mol Co. and CopyCorp ("Complainants") against Sea-Land Service, Inc. ("Respondent") was served July 26, 1995. Complainants allege that Respondent has violated section 18(a) of the Shipping Act of 1916, 46 U.S.C. app. 817 and Section 2 of the Intercoastal Shipping Act of 1993, 46 U.S.C. app. 844 in connection with its improper publication, assessment and collection of a charge denominated as a License Tax, applicable to its ocean transportation service between points and ports in the United States and points and ports in Puerto Rico.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by July 26, 1996, and the final decision of the Commission shall be issued by November 28, 1996.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 95-18822 Filed 7-31-95; 8:45 am]

BILLING CODE 6730-01-M

**Ocean Freight Forwarder License, Reissuance of License**

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2379 .....	Fabian Forwarding Company, Inc., 125 Yellowstone Drive, Reno, NV 89512.	July 17, 1995.

**Bryant L. VanBrakle,**

*Director, Bureau of Tariffs, Certification and Licensing.*

[FR Doc. 95-18775 Filed 7-31-95; 8:45 am]

BILLING CODE 6730-01-M

**Ocean Freight Forwarder License Revocations**

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1693

Name: Mattoon & Co., Inc.

Address: 35 Market St., San Francisco, CA 94103

Date Revoked: July 3, 1995

Reason: Surrendered license voluntarily.

License Number: 3698

Name: Sea Link Corporation

Address: 1601 South State Road 7, Ft. Lauderdale, FL 33317

Date Revoked: July 12, 1995

Reason: Failed to furnish a valid surety bond.

License Number: 3893

Name: Global Shipping and Trade Services, Inc.

Address: 2050 S. Oneida St., Ste. 116, Denver, CO 80224

Date Revoked: July 14, 1995

Reason: Failed to furnish a valid surety bond.

**Bryant L. VanBrakle,**

*Director, Bureau of Tariffs, Certification and Licensing.*

[FR Doc. 95-18776 Filed 7-31-95; 8:45 am]

BILLING CODE 6730-01-M

**GENERAL SERVICES  
ADMINISTRATION**

**Agency Information Collection  
Activities Under OMB Review**

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0263, General Services Administration Multiple Award Schedule (MAS) Discount Schedule and Marketing Data.

This information collection was established to determine the commerciality of items offered, set the Government's negotiation objective, and determine price reasonableness.

*Agency:* Office of GSA Acquisition Policy.

*Addresses:* Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and

Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Streets, NW., Washington, DC 20405.

*Annual Reporting Burden:* 4,000 responses per year; 15 hours per response; annual burden hours 60,000.

*For Further Information Contact:* Ida Ustad (202-501-1043).

*Copy of Proposal:* A copy of this proposal may be obtained from the Information Collection Management (CAIR), Room 7102, GSA Building, 18th & F Streets, NW., Washington, DC 20405, or by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: July 24, 1995.

**Kenneth S. Stacey,**  
*Acting Director, Information Management Division (CAI).*

[FR Doc. 95-18785 Filed 7-31-95; 8:45 am]

BILLING CODE 6820-01-M

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**

**Administration for Children and  
Families**

**Agency Information Collection Under  
OMB Review**

*Title:* Child Care and Development Block Grant Reporting Requirements

*OMB No.:* 0980-0241

*Description:* The purpose of this collection is to obtain data from CCDBG grantees regarding their efforts to increase the availability, affordability and quality of child care using CCDBG funds. This data collection is mandated by statute

*Respondents:* State governments

Title	No. of respondents	No. of re-sponses per respondent	Average burden per response	Burden
ACF-700 .....	282	1	40	11,280
Estimated Total Annual Burden Hours: 11,280				

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Systems, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer

*OMB Comment:* Consideration will be given to comments and suggestions received within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Ms. Wendy Taylor

Dated: July 26, 1995.

**Roberta Katson,**

*Acting Director, Office of Information Resource Management.*

[FR Doc. 95-18863 Filed 7-31-95; 8:45 am]

BILLING CODE 4184-01-M

**Agency Information Collection Under  
OMB Review**

**Proposed Information Collections  
Submitted for Public Comment and  
Recommendations**

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Administration for Children and Families (ACF) is publishing the following summary(ies). Request copies of the proposed collection of information and the related instructions by writing to: The Administration for Children and Families, Office of Information Systems, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: Reports Clearance Officer.

Comments are invited to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on respondents through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

*Proposed Project(s):*

*Title:* Report on Claims of Good Cause for Refusing to Cooperate in Establishing Paternity and Security Child Support

*OMB No.:* 0960-0177

*Description:* This form is an enumeration of the reportable items established in 45 CFR (232.48). The report tabulates the good cause reasons for failure to cooperate in establishing paternity and security child support

*Respondents:* State governments

Title	No. of re-spond-ents	No. of re-sponses per re-spond-ent	Aver-age burden per re-sponse	Burden
AFC-4680 ..... Estimated Total Annual Burden: 432.	54	2	4.0	432

Dated: July 24, 1995.  
**Roberta Katson,**  
*Acting Director, Office of Information Resource Management.*  
 [FR Doc. 95-18864 Filed 7-31-95; 8:45 am]  
 BILLING CODE 4184-01-M

**Agency for Health Care Policy and Research**

**Health Care Policy and Research Special Emphasis Panel Meeting**

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of August 1995:

*Name:* Health Care Policy and Research Special Emphasis Panel.

*Date and Time:* August 14, 1995, 10 a.m.

*Place:* Holiday Inn Washington National Airport, 1489 Jefferson Davis Highway, Borman Room, Arlington, VA 22202.

Open August 14, 10 a.m. to 10:15 a.m.

Closed for remainder of meeting.

*Purpose:* This Panel is charged with conducting the initial review of grant applications submitted in response to a request for applications proposing health services research on advance directives.

*Agenda:* The open session of the meeting on August 14, from 10:00 a.m. to 10:15 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact J. Terrell Hoffeld, D.D.S., Ph.D., Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594-1449.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 25, 1995.  
**Clifton R. Gaus,**  
*Administrator.*  
 [FR Doc. 95-18748 Filed 7-31-95; 8:45 am]  
 BILLING CODE 4160-90-M

**Agency for Toxic Substances and Disease Registry**

[ATSDR-98]

**Policy on Government-to-Government Relations With Native American Tribal Governments**

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces a draft policy that ATSDR proposes to conduct a government-to-government relationship with federally recognized tribal governments. The public is invited to comment on this draft policy statement.

**DATES:** Comments must be received on or before August 31, 1995.

**ADDRESSES:** Submit written comments relating to the draft policy statement to: Office of Federal Programs, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E-28, Atlanta, Georgia 30333, telephone (404) 639-0730.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark M. Bashor, Associate Administrator for Federal Programs, ATSDR, telephone (404) 639-0730.

**SUPPLEMENTARY INFORMATION:** The mission of ATSDR is to prevent exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment. In carrying out its programs, ATSDR works with other Federal, State, and local government agencies, and tribal organizations to protect public health.

The U.S. Government has a unique government-to-government relationship with tribal governments as established by the U.S. Constitution, by treaties, by statute, by court decisions, and by

Executive Orders. ATSDR is strongly committed to building a more effective day-to-day working relationship with tribal governments. This relationship respects their rights of self-government because of their sovereign status.

In fulfilling the commitment to establish and maintain government-to-government relations with federally recognized tribal governments, ATSDR will be guided by:

(1) Section 126 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the principles set forth in the President's "Memorandum for the Heads of Executive Departments and Agencies; Subject: Government-to-Government Relations with Native American Tribal Governments" (April 29, 1994). In particular, ATSDR will

- In a manner consistent with the protection of public health, consult with tribal governments to ensure that tribal rights and concerns are considered before ATSDR takes actions, makes decisions, or implements programs that may affect tribes; and

- Establish procedures to work directly and effectively with tribal governments on ATSDR programs.

(2) The needs and culture of individual tribal governments;

(3) ATSDR's prior and ongoing experience with tribal governments, and recognized organizations associated with such governments; and

(4) A recognized need to enhance coordination with other agencies with related areas of responsibility.

Dated: July 26, 1995.  
**Claire V. Broome,**  
*Deputy Administrator, Agency for Toxic Substances and Disease Registry.*  
 [FR Doc. 95-18826 Filed 7-31-95; 8:45 am]  
 BILLING CODE 4163-70-P

**Centers for Disease Control and Prevention**

[INFO-95-01]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

In compliance with the requirement of Section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request study materials on the proposed project, call the CDC Reports Clearance Officer on (404) 639-3453.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

**Proposed Projects**

1. Emergency Department Prevention of Alcohol-related Injuries—New—The contribution of alcohol to injuries due to motor vehicle crashes, violence, and other causes has been a public health concern for many years. Because the emergency department(ED) is the primary source of treatment for many individuals with alcohol-related injuries, the ED visit provides a unique opportunity for early recognition and initial clinical management of a major injury risk factor, excessive alcohol consumption. The field of alcohol treatment is evolving rapidly and therapeutic attention is increasingly directed toward persons with mild or moderate drinking problems who do not require specialized treatment. Controlled studies in outpatient primary care settings have demonstrated that interventions consisting of as little as a single brief interview and feedback session can decrease alcohol consumption in 40% to 47% of excessive drinkers at 6 months followup. The purpose of this study is to design, implement, and evaluate the effectiveness of an ED-based prevention program for injured patients with alcohol problems that incorporates promising new screening methods and a brief intervention.

Respondents	No. of re-spond-ents	No. of re-sponses/respond-ent	Avg. bur-den/re-sponse (in hours)
Patients .....	1750	2	0.2

2. HIV Prevention Programs in Minority and other Community-Based Organizations Project Reports (0920-0249)—Reinstatement—In FY 1994, CDC awarded approximately \$8,400,000 to national/regional organizations for HIV/STD prevention programs. In FY 1996 the President's budget includes a request of \$15.8 million to continue this program. CDC is responsible for monitoring and evaluating HIV/STD prevention activities conducted with these funds. These reports allow CDC to measure the progress of activities and services supported with these funds which in turn assures quality programming. This is a request to continue to require quarterly progress reports from national/regional minority organizations funded by CDC.

Respondents	No. of re-spond-ents	No. of re-sponses/respond-ent	Avg. bur-den/re-sponse (in hours)
Organization ...	90	4	1

3. Applied Research for Traumatic Brain Injury (TBI) Follow-Up Registry—New—The purpose of this data collection is to plan, implement, and support a population-based registry of persons sustaining TBI to better define the outcomes and secondary conditions associated with the injury. One grant recipient will develop population-based follow-up and data collection methods statewide or in a population defined by a geo-political jurisdiction of 1.5 million or more persons to define the long-term public health impacts of TBI. Tracking mechanisms to follow-up persons with TBI will be developed, a minimal data set will be defined to include demographic and cost data and information about primary and secondary conditions, injury severity, impairments, disabilities, services needed and used, and community reintegration.

Respondents	No. of re-spond-ents	No. of re-sponses/respond-ent	Avg. bur-den/re-sponse (in hours)
TBI patients ....	1000	2	0.5

4. Epidemiology of Fatiguing Illness in Wichita: A Population-Based Study—New—In 1994, OMB approved the information collection "Epidemiology of Fatiguing Illness in Wichita: A Population-Based Study" under OMB Number 0920-0336. Data from this cross-sectional, point prevalence, random-digit-dial survey of prolonged fatiguing illness in San Francisco, CA concluded that CFS continues to exist and that prolonged fatigue occurs in over five percent of the population in San Francisco.

The proposed study replicates the San Francisco study using identical methodology and data collection instruments. Beginning with a random-digit-dial telephone survey to identify fatigued individuals, followed by a case-control study where surveillance interview instruments will be used to obtain comparative data on fatigued individuals and matched health (non-fatigued) controls. Study objectives remain to refine estimates of CFS in Wichita, identify similarities and differences among cases and controls, and to evaluate the merits of a physician-based surveillance conducted by the Wichita department of health.

Respondents	No. of re-spond-ents	No. of re-sponses/respond-ent	Avg. bur-den/re-sponse (in hours)
Individuals screened .....	13,000	1	0.083
Individuals interviewed ..	1,200	1	0.25

5. Refinement of an Instrument on Teen Pregnancy and Contraceptive Use—New—The University of Alabama School of Public Health, through a cooperative agreement with CDC, will develop an instrument that can be used to obtain information about contraceptive decision making and unintended pregnancy among teens. The CDC instrument is to identify factors associated with (1) Early initiation of contraception for sexually active teens; (2) use of effective contraceptive methods; (3) attitudes and beliefs about different methods; (4) timing status of pregnancy and whether an unintended pregnancy resulted from no use or ineffective use; (5) the influence of alcohol and other drugs on contraceptive use; and, (6) the impact of an unintended pregnancy on subsequent contraceptive use. To develop the new instrument, UAB will first conduct and use data from focus groups with teens. Second, the new instrument will be administered by trained interviewers to

a sample of teens pregnant for the first time and sexually active nonpregnant adolescents aged 15–17 in Birmingham, Alabama. Once all of the interviews are completed, data from the questionnaires will be analyzed to determine: (1) The average length of the interview; (2) the reactions of the respondents to the interview questions; (3) questions that were difficult for the respondents and interviewers; and (4) the actual responses to the interview questions. Based on the above analyses, UAB will prepare a report for CDC which will include a revised questionnaire, and recommendations for future use of this type of instrument.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Pregnant adolescents .....	100	1	0.75
Sexually active nonpregnant adolescents .	100	1	0.75

6. Functional Outcome and Use of Services Following Firearm Injuries—New—Patients admitted to an urban hospital for treatment of a firearm injury will be followed in order to: (1) Examine the nature and extent of functional limitations and disability following a firearm injury, (2) examine the factors that influence patient recovery, and (3) document the use of post-acute services and barriers to receiving those services. The following data will be collected: (1) Patients will be interviewed in person prior to discharge and by phone at 3 months and 9 months after discharge; (2) the medical record will also be abstracted.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Patients with firearms injuries .....	320	3	0.60

7. Ciguatera Fish Poisoning Study—New—Approximately 100 patients with acute ciguatera fish poisoning and matched controls who provide written consent before entry into the study will be surveyed about their fish consumption practices, history of ciguatera fish poisoning and symptoms experienced. Objectives of the study will be to examine risk factors for illness, including fish exposure and demographic characteristics of patients.

The study will also attempt to identify distinct or characteristic symptom complexes and responses of patients to various treatments. The study will permit systematic collection of toxic fish specimens for further development of fish screening tests. Respondents will be patients over age 18 presenting to emergency rooms and diagnosed with ciguatera fish poisoning.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Diagnosed patients .....	200	2	0.75

8. A Case-Control Study to Determine if College Attendance is a Risk Factor for Development of Invasive Meningococcal Disease (0920–0321)—Reinstatement—The frequency of reports of fatal or life-threatening meningococcal disease in previously healthy college students raises the possibility that college students are at increased risk of meningococcal disease. Potential similarities between college students and military recruits, for whom increased risk has been clearly established and who are routinely vaccinated against meningococcal disease upon entry, suggest the need to clarify the role of college attendance in the occurrence of meningococcal disease. To determine if college attendance is a risk factor for meningococcal disease NCID hopes to conduct a retrospective, case-control study based on cases identified by state health departments. (0920–0321)

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Infected college students .....	400	1	0.355

9. Nationally Sexually Transmitted Disease morbidity Surveillance system—Continuation—The purpose of these reports is to collect STD morbidity surveillance data from state health departments nationwide. The data are used by health care planners at the national, state, and local levels to develop and evaluate STD prevention and control programs. In addition there are many other users of the data including scientist, researchers, educators, students and the media.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
State and large city health departments	60	4	2
State and large city health departments	60	12	0.583
State and large city health departments	60	2	3

Dated: July 20, 1995.

**Joseph R. Carter,**

*Acting Associate Director for Management And Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95–18827 Filed 7–31–95; 8:45 am]

**BILLING CODE 4163–18–P**

**Disabilities Prevention Program Project Workshop**

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Disabilities Prevention Program Project Workshop.

*Times and Dates:* 4 p.m.–6 p.m., August 29, 1995, 8:30 a.m.–4:30 p.m., August 30, 1995, 8:30 a.m.–12 noon, August 31, 1995.

*Place:* Marriott Pavilion Hotel, One South Broadway, St. Louis, Missouri 63102, telephone 314/421–1776.

*Status:* Open to the public for observation, participation, comment, and is limited only by space available. The meeting room will accommodate approximately 100 people.

*Purpose:* The meeting will provide a forum for presentations and discussions on the surveillance of secondary conditions associated with primary disabilities, current and future program priorities, and future Federal funding policies. In addition, individualized technical assistance related to project issues will be available to State grantees.

*Matters To Be Discussed:* Topics to be discussed will include: Updates on the National Disabilities Prevention Program and National legislation; background and concepts of International Classification of Impairment, Disabilities, and Handicap and how secondary conditions fit; state of the art and practical illustrations of secondary conditions; defining the role of the States in disability prevention; and a question and answer session.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Jack Stubbs, Project Officer, Disabilities Prevention Program, NCEH, CDC, 4770 Buford Highway, NE, Mailstop F–29, Chamblee, Georgia 30341–3724, telephone 404/488–7080, FAX 404/488–7075.

Dated: July 25, 1995.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-18836 Filed 7-31-95; 8:45 am]

BILLING CODE 4160-18-M

**Advisory Committee for Energy-Related Epidemiologic Research; Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Name:* Advisory Committee for Energy-Related Epidemiologic Research.

*Times and Dates:* 9 a.m.-5 p.m., August 23, 1995, 9 a.m.-12 noon, August 24, 1995.

*Place:* Sheraton Suites Hotel, 801 North Saint Asaph Street, Alexandria, Virginia 22314.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Purpose:* This committee is charged with providing advice and recommendations to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry, on the establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies. The Committee will take into consideration information and proposals provided by the Department of Energy (DOE), the Advisory Committee for Environment Safety and Health which was established by DOE under the guidelines of a Memorandum of Understanding between HHS and DOE, and other agencies and organizations, regarding the direction HHS should take in establishing the research agenda and in the development of a research plan.

*Matters To Be Discussed:* The Committee will meet to discuss working group recommendations, environmental data and research methods, the research agenda, and public involvement activities. Presentations will be made by DOE on the Conference on Epidemiologic Data Resources and occupational surveillance plans and progress.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, Mailstop F-35, Atlanta, Georgia 30341-3724, telephone 404/488-7040.

Dated: July 25, 1995.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-18840 Filed 7-31-95; 8:45 am]

BILLING CODE 4163-18-M

**Workshop to Review the Evidence for an Association Between Exposure to Stachybotrys Arta and Diseases Among Infants**

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Workshop to Review the Evidence for an Association Between Exposure to Stachybotrys Atra and Diseases Among Infants.

*Time and Date:* 9 a.m.-4:30 p.m., August 25, 1995.

*Place:* CDC, 4770 Buford Highway, NE, Building 101, Room 1301, Chamblee, Georgia 30341-3724, telephone 404/488-7322.

*Status:* Open to the public, limited only by the space available. The room will accommodate approximately 50 people.

*Purpose:* In November 1994, CDC responded to a request from the Ohio Department of Health to assist in the investigation of a cluster of cases of pulmonary hemosiderosis among infants in Cleveland. In December 1994, CDC was asked to respond to a request from the Illinois Department of Health to investigate a similar cluster in Chicago. Preliminary data from both investigations are now available. This workshop is being held to solicit individual advice and recommendations from scientists and representatives of other Federal agencies, State and local governments, academia, and the public, regarding additional epidemiologic research needs in studying the association between exposure to Stachybotrys atra and diseases among infants. The results of the workshop will be used to aid in the development of a proposed research agenda.

*Matters To Be Discussed:* Topics will include the presentation of preliminary results from the epidemiologic investigations from the Cleveland area in November-December 1994 and the Chicago area in December 1994-January 1995, followed by open discussions of data and suggestions for additional analyses.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* James Rifenburg, Public Health Advisor, Air Pollution and Respiratory Health Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, Mailstop F-39, Chamblee, Georgia 30341-3724, telephone 404/488-7322, FAX 404/488-7335.

Dated: July 25, 1995.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-18837 Filed 7-31-95; 8:45 am]

BILLING CODE 4163-18-M

**Public Health Response to Nasopharyngeal Radium Irradiation Workshop**

Yale University School of Medicine, the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC), the Department of Veterans Affairs, and the Connecticut Department of Health announce the following meeting.

*Name:* The Public Health Response to Nasopharyngeal Radium Irradiation Workshop.

*Times and Dates:* 8:30 a.m.-5:15 p.m., September 27, 1995, 8:30 a.m.-12:45 p.m., September 28, 1995.

*Place:* Quality Inn (Conference Center), 100 Pond Lily Avenue, New Haven, Connecticut 06525, telephone 203/387-6651.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 250 people.

*Purpose:* The purpose of this workshop is to review information on the medical use of nasopharyngeal radium irradiation, a medical treatment used from approximately 1940 to 1960, to evaluate current knowledge of risks of potential adverse health effects, and determine what, if any, public health assessments are needed for persons and populations who received nasopharyngeal radium irradiation.

Agenda items are subject to change as priorities dictate.

*Contact Persons for More Information:* Jan Stolwijk, Ph.D., Department of Epidemiology and Public Health, Yale University School of Medicine, 60 College Street, PO Box 208034, New Haven, Connecticut 06520-8034, telephone 203/785-2880, FAX 203/785-6980, or Anne Mellinger, M.D., Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F-35, Atlanta, Georgia 30341-3724, telephone 404/488-7040, FAX 404/488-7044, e-mail: akm0@cehdeh1.em.cdc.gov.

Dated: July 25, 1995.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-18838 Filed 7-31-95; 8:45 am]

BILLING CODE 4163-18-M

**National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee; Meeting**

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control and

Prevention (CDC), announces the following committee meeting.

*Name:* NCVHS Executive Subcommittee.  
*Times and Dates:* 9 a.m.-5 p.m., August 29, 1995, 9 a.m.-2 p.m., August 30, 1995.  
*Place:* The Bavarian Inn, Route 1, Shepherdstown, West Virginia 25443.

*Status:* Open.

*Purpose:* The purpose of this meeting is for the Executive Subcommittee to review accomplishments, structure, needs and work plans of NCVHS and individual subcommittees.

*Contact Person for More Information:* Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050.

Dated: July 25, 1995.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 95-18839 Filed 7-31-95; 8:45 am]

BILLING CODE 4163-18-M

## Food and Drug Administration

[Docket No. 95N-0185]

### Drug Export; Arimidex (Anastrozole) 1 Milligram (mg) Tablet

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

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 29, 1995 (60 FR 33810). The document announced that Zeneca Pharmaceuticals Inc., was requesting conditional approval for export of the human drug Arimidex (Anastrozole) 1 mg tablet to the United Kingdom. The document contained an error in indication for use. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** James E. Hamilton, Center for Drug Evaluation and Research (HFD-310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301-594-3150.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 95-15969 appearing on page 33810 in the **Federal Register** of Thursday, June 29, 1995, the following correction is made:

On page 33810, in the second column, under the heading **SUPPLEMENTARY INFORMATION**, line 29, the word "colorectal" is corrected to read "breast".

Dated: July 24, 1995.

**Betty L. Jones,**

*Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.*

[FR Doc. 95-18747 Filed 7-31-95; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 95N-0230]

### Statement Regarding the Demonstrations of Effectiveness of Human Drug Products and Devices

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its position regarding demonstrations of product effectiveness in new drug applications (NDA's) and premarket approval applications (PMA's). In evaluating NDA's and PMA's, FDA weighs the product's demonstrated effectiveness against its risks and considers other factors such as the seriousness and outcome of the disease being treated and the adequacy of existing treatments. The agency does not require new human drug products or medical devices to be more effective than existing therapies nor does it necessarily require the product to be compared to other products. However, for products intended to treat life-threatening diseases, diseases with irreversible morbidity, and contagious diseases that pose serious health risks to others, it is essential for public health protection that a new therapy be as effective as existing, approved therapies.

**DATES:** Written comments by October 30, 1995.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2831.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton announced plans for reforming the Federal regulatory system as part of his "Reinventing Government" initiative. Part of this reform is aimed at reviewing regulatory processes to determine which requirements could be reduced or eliminated without lowering health and safety standards.

Pursuant to the President's "Reinventing Government" initiative, FDA made several recommendations with respect to the regulation of human

drug products and medical devices. One recommendation was the issuance of a public statement clarifying certain aspects of the standards for the effectiveness of human drug products and medical devices.

The Federal Food, Drug, and Cosmetic Act (the act) requires NDA's and PMA's to contain full reports of information demonstrating that the drug or device is safe and effective under conditions of use in the product's proposed labeling. (See sections 505(b) and 515(c) of the act (21 U.S.C. 355(b) and 360e(c)).) The agency must deny approval of a NDA or a PMA if it finds that the application does not demonstrate that the product is safe and effective for the uses indicated in the product's proposed labeling. (See sections 505 (c) and (d) and 515(d) of the act.)

Pharmaceutical and device manufacturers have sometimes claimed that the agency requires new human drug products and especially class III devices (devices for which insufficient information exists to assure that general controls and special controls provide reasonable assurance of safety and effectiveness; in general, these are the higher risk devices) to be more effective for their intended uses than comparable therapies that are already approved for marketing. These firms assert that FDA's requirements for demonstrating effectiveness present unreasonable difficulties in developing new therapies and bringing those new therapies to market.

This notice is intended to address the concerns about a comparative effectiveness standard that have been raised. In evaluating the safety of a new drug or medical device, FDA weighs the product's demonstrated effectiveness against its risks to determine whether the benefits outweigh the risks. This weighing process also takes into account information such as the seriousness and outcome of the disease, the presence and adequacy of existing treatments, and adverse reaction and other safety data.

In evaluating effectiveness, FDA reviews new drug products and devices on their merits. FDA does not require new drug products or devices to be more effective than approved therapies for the same disease or condition. In general, both new drug products and class III devices must be shown to be effective through evidence consisting of clinical investigations that provide a basis on which it can be concluded that the new drug product or class III device will be safe and have the effect that it is represented to have.

For most new drug products and new class III devices intended to treat serious

illness or provide symptomatic relief, a showing of effectiveness is usually based on a clinical trial comparing the product to a placebo. Such a showing does not necessarily involve a comparison to another active treatment or a product that is known to be effective.

In certain circumstances, however, it may be important to consider whether a new product is less effective than available alternative therapies, when less effectiveness could present a danger to the patient or to the public. For example, it is essential for public health protection that a new therapy be as effective as alternatives that are already approved for marketing when: (1) The disease to be treated is life-threatening or capable of causing irreversible morbidity (e.g., stroke or heart attack); or (2) the disease to be treated is a contagious illness that poses serious consequences to the health of others (e.g., sexually transmitted diseases).

It should be noted that new products are often developed for particular subpopulations who either do not respond to or are not able to tolerate an existing approved therapy. FDA will generally approve for use in such a subpopulation a product that is shown to have effectiveness in this group, regardless of whether the product can be shown to be as effective in the broad target population as the alternative therapy. This is because, in effect, there is no available alternative therapy for the subpopulation. For example, a number of patients cannot tolerate a widely used therapy for an acquired immune deficiency syndrome (AIDS)-related pneumonia. FDA approved atovaquone for use in these patients even though the drug had been shown to be less effective than the standard therapy when tested in a broad population.

An additional issue related to product effectiveness concerns the assertion, by some industry officials, that the act not be interpreted as requiring multiple clinical studies when one "pivotal" study could suffice.

FDA believes good science dictates that a showing of effectiveness must be methodologically sound and provide a high level of confidence in the validity of the result. For human drug products, this ordinarily is achieved by independently replicating the result in a second study, to constitute an adequate demonstration of effectiveness for a new product. While a second study may well be needed to replicate results demonstrated in a first study, in some instances, it is possible to replicate results within one large, well-designed, multi-center study. FDA emphasizes

that this approach can be successful only when results are strong. The agency has, in the past, approved new human drug products on the basis of a single, multi-center study. Examples include dornase alfa for the treatment of cystic fibrosis, timolol for treatment of people after a heart attack, and zidovudine for AIDS. A statistically marginal result, even in a very large study, cannot provide convincing evidence without replication.

For medical devices, where the mechanism of action is a result of product design and substantially verified by in vitro performance testing, the agency has routinely relied on single studies evaluated for internal and across-center consistency to provide this high level of confidence in the result.

Dated: July 27, 1995.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 95-18877 Filed 7-31-95; 8:45 am]

BILLING CODE 4160-01-F-M

### Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, and 56 FR 29484, June 27, 1991, as amended most recently in pertinent part at 58 FR 14214, March 16, 1993) is amended to reflect the following reorganization in the Food and Drug Administration (FDA).

The Office of the Center Director (OCD), Center for Drug Evaluation and Research (CDER) is being reorganized to enhance CDER's responsiveness to its internal and external customers. The Executive Operations Staff is being established to combine project management, executive secretariat, and program management functions. The functions and staff of the Division of Regulatory Affairs are being transferred from the Office of Compliance to OCD as the Regulatory Affairs Staff.

Under section HF-B, Organization:

1. Delete the subparagraph *Office of the Center Director (HFN1)* under the *Center for Drug Evaluation and Research (HFN)*, in its entirety and insert a new subparagraph reading as follows:

*Office of the Center Director (HFN1).* Promulgates, plans, administers, coordinates, and evaluates overall Center scientific, management, and regulatory programs, plans, and policies.

Provides leadership and direction for all Center activities.

Coordinates and directs the Center management, planning, and evaluation systems to assure optimum utilization of Center manpower, financial resources, and facilities.

Directs Center operations for equal employment activities.

2. Insert a new subparagraph *Executive Operations Staff (HFN11)* under the *Office of the Center Director (HFN1)* reading as follows:

*Executive Operations Staff (HFN11).* Provides executive secretariat support to the Immediate Office of the Center Director, including coordinating executive and legislative correspondence and activities; managing the preparation and coordination of meetings; and preparing background material, graphics, and other information for meetings, speeches, and presentations.

Provides project management support for Centerwide and Agencywide initiatives to improve the quality and timeliness of regulatory reviews and improve team-based management practices.

Provides management support and advice to senior Center management concerning Center programs, including Center extramural contracts and grants activities.

3. Insert a new subparagraph, *Regulatory Affairs Staff (HFN13)*, under the *Office of the Center Director (HFN1)* reading as follows:

*Regulatory Affairs Staff (HFN13).* Initiates, develops, and reviews regulations, policies, procedures, and guidelines that affect the drug approval process.

Serves as the Center's focal point on regulatory issues providing advice and assistance on such matters as scope, applicability, and intents of the Food, Drug, and Cosmetic Act and other laws, regulations, and policies.

4. Delete the subparagraph, *Office of Compliance (HFND)*, under the *Center for Drug Evaluation and Research (HFN)* and insert a new subparagraph reading as follows:

*Office of Compliance (HFND).* Monitors the quality of marketed drugs through product testing, surveillance, and compliance programs.

Advises the Center Director and other Agency officials on FDA's regulatory responsibilities for drugs.

Develops standards for drug industry practices, including Current Good Manufacturing Practice (CGMP) regulations, and ensures their uniform interpretation.

Directs the Center's bioresearch monitoring program for drug products.

Identifies problems in drug regulation, manufacturing, and quality assurance and conducts voluntary compliance programs and studies.

Develops drug quality assurance and surveillance programs; coordinates and directs their field implementation; and advises other Center components on these programs.

Coordinates Center-field relations; provides support and guidance to the field on legal actions, case development, and contested cases; and reviews and decides disposition of field submissions involving deviations from standards.

Initiates Center-field surveillance assignments to monitor pivotal research data submitted as part of premarketing applications.

Recommends approval, denial of approval, or revocation of approval of activities that use methadone and other drugs for which treatment standards have been promulgated, taking any appropriate compliance action.

Evaluates, in coordination with appropriate Agency Regulatory affairs officials, a firms' conformance with CGMP in producing drugs for procurement by Federal and State agencies.

Evaluates, classifies, and recommends drug recalls and provides Center coordination with field recall activities.

Develops and implements policies and procedures in support of Center compendial operations and directs the Compendial Monographs Development and Evaluation Program.

**5. Prior Delegations of Authority.** Pending further delegations, directives, or orders by the Commissioner of Food and Drugs, all delegations of authority to positions of the affected organizations in effect prior to this date shall continue in effect in them or their successors.

Dated: July 19, 1995.

**David A. Kessler,**

*Commissioner of Food and Drugs.*

[FR Doc. 95-18754 Filed 7-31-95; 8:45 am]

BILLING CODE 4160-01-M

## National Institutes of Health

### National Institute of Dental Research; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

*Name of SEP:* National Institute of Dental Research Special Emphasis Panel-Conference Grant Review-1 Program (Teleconference).

*Dates:* August 11, 1995.

*Time:* 12 noon.

*Place:* Natcher Building, Rm. 4AN-44F, National Institutes of Health, Bethesda, MD 20892.

*Contact Person:* Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN-44F, Bethesda, MD 20892, (301) 594-2372.

*Purpose/Agenda:* To evaluate and review grant applications and/or contract proposals.

*Name of SEP:* National Institute of Dental Research Special Emphasis Panel-R03 Review-3 (Teleconference).

*Dates:* August 18, 1995.

*Time:* 2 p.m.

*Place:* Natcher Building, Rm. 4AN-44F, National Institutes of Health, Bethesda, MD 20893.

*Contact Person:* Dr. Yong Shin, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN-38J, Bethesda, MD 20892, (301) 594-2372.

*Purpose/Agenda:* To evaluate and review grant applications and/or contract proposals.

*Name of SEP:* National Institute of Dental Research Special Emphasis Panel-Clinton Core Centers Review.

*Dates:* October 18-20, 1995.

*Time:* 9 a.m.

*Place:* Natcher Building, Rm. 4AN-44F, National Institutes of Health, Bethesda, MD 20893.

*Contact Person:* Dr. George Hausch, Chief, Review Section, 4500 Center Drive, Natcher Building, Room 4AN-38J, Bethesda, MD 20892, (301) 594-2372.

*Purpose/Agenda:* To evaluate and review grant applications and/or contract proposals.

The meetings will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the extramural research review cycle.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: July 26, 1995.

**Margery G. Grubb,**

*Senior Committee Management Specialist, NIH.*

[FR Doc. 95-18856 Filed 7-31-95; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Mental Health; Notice of Closed Meeting

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 of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* August 17, 1995.

*Time:* 1 p.m.

*Place:* Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Rehana A. Chowdhury, Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301-443-6470.

The meeting will be closed in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.242, Mental Health Research Grants; 93.121, Scientist Development Awards; 93.282, Mental Health Research Service Awards for Research Training)

Dated: July 26, 1995.

**Margery G. Grubb,**

*Senior Committee Management Specialist, NIH.*

[FR Doc. 95-18858 Filed 7-31-95; 8:45 am]

BILLING CODE 4140-01-M

### Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Microbiological and Immunological Sciences.

*Date:* August 17, 1995.

*Time:* 1:00 p.m.

*Place:* NIH, Rockledge II, Room 4200, Telephone Conference.

*Contact Person:* Dr. Gil Meier, Scientific Review Admin., 6701 Rockledge Drive, Room 4200, Bethesda, MD 20892, (301) 435-1219.

*Name of SEP:* Behavioral and Neurosciences.

*Date:* August 17, 1995.

*Time:* 1:00 p.m.

*Place:* NIH, Rockledge II, Room 5192, Telephone Conference.

*Contact Person:* Dr. David Simpson, Scientific Review Administrator, 6701 Rockledge Drive, Room 5192, Bethesda, MD 20892, (301) 435-1278.

The meetings will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95-18854 Filed 7-31-95; 8:45 am]

BILLING CODE 4140-01-M

### Division of Research Grants; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meeting:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Clinical Sciences.

*Date:* August 4, 1995.

*Time:* 1:00 p.m.

*Place:* NIH, Rockledge II, Room 4112, Telephone Conference.

*Contact Person:* Dr. Gopal Sharma, Scientific Review Administrator, 6701 Rockledge Drive, Room 4112, Bethesda, MD 20892, (301) 435-1783.

The meeting will be closed in accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 1995.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 95-18855 Filed 7-31-95; 8:45 am]

BILLING CODE 4140-01-M

### National Institute of Mental Health; Notice of Closed Meeting

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 of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* August 16, 1995.

*Time:* 11 a.m.

*Place:* Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857.

*Contact Person:* Rehana A. Chowdhury, Parklawn, Room 9C-26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301 443-6470.

The meeting will be closed in accordance with the provisions set forth in secs.

552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the grant review cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.242, Mental Health Research Grants; 93.121, Scientist Development Awards; 93.282, Mental Health Research Service Awards for Research Training)

Dated: July 26, 1995.

**Margery G. Grubb,**

*Senior Committee Management Specialist, NIH.*

[FR Doc. 95-18857 Filed 7-31-95; 8:45 am]

BILLING CODE 4140-01-M

### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR-3936-N-01]

#### Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

**ACTION:** Notice of change in debenture interest rates.

**SUMMARY:** This notice announces changes in the interest rates to be paid

on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under Section 221(g)(4) of the Act during the six-month period beginning July 1, 1995, is 6¾ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1995, is 7¼ percent.

**FOR FURTHER INFORMATION CONTACT:** James B. Mitchell, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, Room 3119, Washington, DC 20024. Telephone (202) 755-7450 ext. 125, or TDD (202) 708-4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the

period beginning July 1, 1995, is 7¼ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 7¼ percent for the six-month period beginning July 1, 1995. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1995.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9¾	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12¾	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10¾	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13¾	July 1, 1984	Jan. 1, 1985.
11½	Jan. 1, 1985	July 1, 1985.
11½	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9½	Jan. 1, 1988	July 1, 1988.
9¾	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8½	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6½	Jan. 1, 1994	July 1, 1994.
7¼	July 1, 1994	Jan. 1, 1995.
8¾	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995.	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" of interest in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of eight- to twelve-year maturities, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented

in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the six-month period beginning July 1, 1995, is a 6¾ percent.

HUD expects to publish its next notice of change in debenture interest rates in December 1995.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: July 24, 1995.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 95-18769 Filed 7-31-95; 8:45 am]

BILLING CODE 4210-27-M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[ID-030-030216-1220-00-24-1A]

**Implementation of Planning Document Restricting Vehicle Use to Designated Roads and Trails, Limiting Use of Certain Vehicles, and Prohibiting the Use of Firearms Within Designated Safety Zones Within the Chinks Peak/Blackrock Canyon Resource Activity Planning Area**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given in accordance with Title 43 CFR Group 8000-Recreation Programs, and in accordance with the principles established by the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, that lands administered by the Bureau of Land Management within Bannock County, Idaho, known as the Chinks Peak/Blackrock Canyon Planning Area have certain roads and trails which have been designated for specific types of vehicle use. For the purposes of this notice, a vehicle is defined as: Any device used for transporting personnel or material with wheels, tracks, or skids for traveling over land, water, or snow, and is propelled by a living or non-living power source contained or carried on or within the device. Includes bicycles.

The following vehicle restrictions apply to this planning area:

(1) The connector trail between Blackrock Canyon and Caddy Canyon (T. 7 S., R. 35 E., Sec. 12, BM, T. 7 S., R. 36 E., Sec. 7 and 18, BM.) is open only to vehicles 48 inches in width or less;

(2) The current designation on the road that parallels the Right Hand Fork of Blackrock Creek from Katsilometes Spring to the top of the canyon. (T. 7 S., R. 35 E., Sec. 12, BM. and T. 7 S., R. 36 E., Sec. 7 and 6, BM.), is being changed from open to all motor vehicles to open only to vehicles less than 48 inches in width;

(3) The trail connecting Sorrel Canyon to the top of Caddy Canyon (T. 7 S., R. 36 E., Sec. 5, 6, 8 and 9, BM.) and on into Blackrock Canyon is designated as a non-motorized vehicle trail only;

(4) The trail in T. 7 S., R. 36 E., Sec. 6, 7, 13, and 18, BM. is open only to vehicles less than 48 inches in width.

(5) Any other travel within the planning area is restricted to travel on designated roads and trails by any vehicle.

(6) The entire planning area is closed to all vehicles from November 15 to April 15 of each year, with the exception of the area identified as the Northeast subunit. This area is open to snowmobiles as identified in the **Federal Register** notice dated September 5, 1980.

The above vehicle restrictions apply to all public lands bounded by the following description: From the junction of Interstate I-15 and the Pocatello Creek Road following I-15 southerly to Inkom, Idaho and the junction of I-15 and the Rapid Creek Road, thence northerly on the Rapid Creek Road to the West Fork of Rapid Creek Road (known as the Hoot Owl Road), thence westerly on the West Fork of Rapid Creek to the junction of the West Fork of Rapid Creek and the Buckskin Road, thence westerly on the Buckskin Road to the junction of the Pocatello Creek Road to the point of beginning.

In addition to the above vehicle restrictions, the Bureau of Land Management is also implementing a shooting restriction area or safety zone. The need for this restriction is due to the heavy recreational use of the area along the main Blackrock Canyon Road from the Public Land boundary up to and including Katsilometes Spring, (T. 7 S. R. 35 E., Sec. 11, 12, and 14, BM.). It has been determined that in the interest of the public's safety and well being, shooting of any firearm is prohibited within 150 yards of either side of the above designated road.

The plan implementing these actions was approved on May 25, 1995 by Pocatello Area Manager Jeff S. Steele. The plan was jointly prepared through public input and a public meeting held on February 2, 1995. The planning area covers approximately 13,806 acres of Public lands administered by the Bureau of Land Management.

The official map of the above vehicle designations and planning area is on file at the Pocatello Resource Area Office, Bureau of Land Management, 1111 N. 8th. Ave., Pocatello, Idaho, 83201. Copies of the map are available upon request.

The following individuals are exempt from this notice: individuals involved in the performance of their official duties and administration of the area such as the BLM, Local and Federal fire fighting agency's, local law enforcement, search and rescue, or other individuals so authorized by the Bureau of Land Management.

**EFFECTIVE DATE:** This restriction notice shall be effective immediately and shall stay in effect until modified or rescinded.

**FOR FURTHER INFORMATION CONTACT:** Jeff S. Steele, Pocatello Resource Area Manager, Bureau of Land Management, 1111 N. 8th. Ave. Pocatello, Idaho 83201 (208) 236-6860.

Dated: July 6, 1995.

**Jeff S. Steele,**  
Area Manager.

[FR Doc. 95-17839 Filed 7-31-95; 8:45 am]

**BILLING CODE 4310-GG-P**

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 22, 1995. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Written comments should be submitted by August 16, 1995.

**Carol D. Shull,**

*Keeper of the National Register.*

## ALABAMA

### Baldwin County

Brunell House, 12113 Jessamine St.,  
Magnolia Springs, 95001019

### Fayette County

Rose, Edward, House, 325 2nd Ave., NW.,  
Fayette, 95001020

### Lauderdale County

Downtown Florence Historic District,  
Roughly, 104 N. Court St.—119 S. Court St.  
(E side), 100-128 E. Tennessee St. and 106,  
108 and 110 S. Seminary St., Florence,  
95001021

### Macon County

Butler Chapel African Methodist Episcopal  
Zion Church, 1002 N. Church St.,  
Tuskegee, 95001022

### Tallapoosa County

Herzfeld, Reuben, House, 497 Hillabee St.,  
Alexander City, 95001023

## DELAWARE

### New Castle County

Iron Hill School No. 112C, 1335 Old  
Baltimore Pike, Pencader Hundred,  
Newark vicinity, 95001032  
North Saint Georges Historic District,  
Roughly, along Main, Broad, Delaware and  
Church Sts., Red Lion Hundred, St.  
Georges, 95001033

## IOWA

### Audubon County

Kimballton Commercial District (Ethnic  
Historic Settlement of Shelby and  
Audubon Counties MPS), Jct. of Alfred and  
Main Sts., Kimballton, 95001016  
Kimballton West 2nd—West 3rd Street  
Residential District (Ethnic Historic  
Settlement of Shelby and Audubon  
Counties MPS), Roughly, W. 2nd St. from  
IA 44 to S of Odense St. and W. 3rd St.  
from IA 44 to Esbeck St., Kimballton,  
95001017

## MASSACHUSETTS

### Worcester County

East Blackstone Friends Meetinghouse, 197  
Elm St., Blackstone, 95001035  
Holden Center Historic District (Boundary  
Increase), Roughly, along Highland, Main,  
Reservoir, Pleasant and Walnut Sts. and  
Woodland, Phillips and Lovell Rds.,  
Holden, 95001031  
Southwick—Daniels Farm, 286 Mendon St.,  
Blackstone, 95001030

## MICHIGAN

### Manistee County

Udell Lookout Tower, Forest Rd. 5207,  
Huron—Manistee NF, Wellston, 95001013

## NEW MEXICO

### Colfax County

Villa Philmonte Historic District, Philmont  
Scout Ranch, Cimarron vicinity, 95001018

### Lincoln County

Hopeful Lode, (Mining Sites in the Nogal  
Mining District of the Lincoln National  
Forest MPS), Along Forest Rd. 108, 6 mi.  
N of jct. of Forest Rds. 107 and 108, N of  
Bonito Lake, Nogal vicinity, 95001014

## NEW YORK

### Kings County

Renaissance Apartments, 480 Nostrand Ave.,  
Brooklyn, 95001026

### Otsego County

Lindesay Patent Rural Historic District  
(Boundary Increase), Roughly bounded by  
US 20, NY 166, Fields Rd., O'Neil Rd., Co.  
Rd. 33 and Shipway Rd., Cherry Valley,  
95001024

### Washington County

Village of Greenwich Historic District,  
Roughly, along Academy, Church, Cottage,  
Gray, Main, Prospect and Salem Sts. and  
Washington Sq., Town of Greenwich,  
Greenwich, 95001025

## OHIO

### Licking County

Outville Depot, 6750 Outville Rd., SW.,  
Pataskala vicinity, 95001034

## TENNESSEE

### Dickson County

Leech—Larkins Farm (Historic Family Farms  
in Middle Tennessee MPS), 4199 TN 47,  
Charlotte vicinity, 95001015

## TEXAS

### Galveston County

Illies Building—Justine Apartments,  
(Galveston Central Business District—  
Downtown MPS), 503 21st St., Galveston,  
95001028

### Tarrant County

Shaw, Thomas and Marjorie, House, 2404  
Medford Ct. E., Fort Worth, 95001029

### Travis County

Brewer, John Henry and Minnie Tate, House,  
1108 S. Chicon St., Austin, 95001027

## WASHINGTON

### Kitsap County

Jackson Hall Memorial Community Hall,  
9161 Washington Ave., Silverdale,  
95001036

[FR Doc. 95-18852 Filed 7-31-95; 8:45 am]

**BILLING CODE 4310-70-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Importation of Controlled Substances; Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on June 2, 1995, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105) .....	II
Phenylacetone (8501) .....	II

The firm plans to import the listed controlled substances to manufacture pharmaceutical products.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 24, 1995.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 95-18751 Filed 7-31-95; 8:45 am]

BILLING CODE 4410-09-M

**Manufacturer of Controlled Substances; Registration**

By Notice dated April 4, 1995, and published in the **Federal Register** on April 12, 1995, (60 FR 18618), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Hydromorphone (9150), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 95-18753 Filed 7-31-95; 8:45 am]

BILLING CODE 4410-09-M

**Importer of Controlled Substances; Registration**

By Notice dated March 8, 1995, and published in the **Federal Register** on March 14, 1995, (60 FR 13736), Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: July 24, 1995.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 95-18752 Filed 7-31-95; 8:45 am]

BILLING CODE 4410-09-M

**DEPARTMENT OF LABOR**

**Employment Standards Administration**

**Agency Reporting/Recordkeeping Requirements To Be Reviewed by the Office of Management and Budget (OMB); Correction**

**AGENCY:** Employment Standards Administration, Labor.

**ACTION:** Correction.

**SUMMARY:** In notice document 95-17997 beginning on page 37675 in the issue of Friday, July 21, 1995, make the following corrections:

On page 37675; in the last column, the sentence which reads: "Comments on the information collection should be directed to the Agency Clearance Officer within 30 days of this notice" should be changed to read: "Comments on the information collection should be directed to the Agency Clearance Officer within 60 days of this notice." On page 37676 first column, 38 U.S.C. 2012 should be changed to read U.S.C. 4212.

Dated: July 27, 1995.

**Margaret J. Sherrill,**

*Chief, Branch of Management, Review and Analysis, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 95-18821 Filed 7-31-95; 8:45 am]

BILLING CODE 4510-27-M

**Employment and Training Administration**

**Advisory Council on Unemployment Compensation; Notice of Meeting**

**SUMMARY:** The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102-164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the ACUC to evaluate the overall unemployment insurance program.

The ACUC recently, through requests for proposals, commissioned researchers to prepare reports on a variety of topics associated with the ACUC's deliberations on the reform of the unemployment insurance system. The purpose of this meeting is to provide a forum for presentation and discussion of the results of these research findings.

**Time and Place:** The meeting will be held from 8 a.m. to 5:30 p.m. on August 17, 1995 and from 8 a.m. to 4:15 p.m. on August 18, 1995 at Hampton Inn, 8 Mountain View Drive, Colchester, Vermont. A lunch break is

scheduled from 12:15 p.m. to 1:45 p.m. on August 17, 1995 and from 12:00 p.m. to 1:30 p.m. on August 18, 1995.

*Agenda:* Conference participants will present and discuss the following commissioned reports:

1. Do Employees Take Advantage of Free-Layoff Loopholes in Unemployment Insurance?
2. The Effects of UI Payroll Tax on Layoffs, Employment, and Wages: A Natural Experiment in Washington State
3. Unemployment Insurance and Household Welfare: Microeconomic Evidence 1980-93
4. Optimal Unemployment Insurance
5. The Role of UI in Addressing Structural Unemployment: Lessons from Other Nations
6. Repeat Use of Unemployment Insurance
7. The Design of Extended Unemployment Benefit Programs
8. The Evaluation of Unemployment Insurance
9. Interstate Competition in the UI Program
10. Incentive Compatibility in Administering the UI System
11. Rethinking Federal and State Roles in Unemployment Insurance
12. The Unemployment Experience of Immigrants
13. Eligibility Disputes in UI: A Comparison of the U.S. and Other Systems
14. Understanding Denials and Appeals in the U.S.

*Public Participation:* The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal official (DFO), listed below, at least 7 days prior to the meeting.

*For Additional Information Contact:* Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S4231, Washington, DC 20210. She may be reached at (202) 219-7831 (this is not a toll-free number).

Signed at Washington, DC, this 27th day of July 1995.

**Timothy M. Barnicle,**

*Assistant Secretary of Labor.*

[FR Doc. 95-18820 Filed 7-31-95; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (95-067)]

### Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of agency report forms under OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection

requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made submission.

Copies of the proposed forms, the requests for clearance (OMB 83-1), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

**DATES:** Comments are requested by August 31, 1995. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

**ADDRESSES:** Donald J. Andreotta, NASA Agency Clearance Officer, Code JT, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700-0084), Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Bessie B. Berry, NASA Reports Officer, (202) 358-1368.

### Reports

*Title:* NASA Customer Satisfaction Surveys Under E.O. 12862.

*OMB Number:* 2700-0084.

*Type of Request:* Extension.

*Frequency of Report:* Semi-annually.

*Type of Respondent:* Individuals or households, business or other for profit, not-for-profit institutions.

*Number of Respondents:* 1,000.

*Total Annual Responses:* 1,000.

*Hours Per Request:* .25.

*Total Annual Burden Hours:* 250.

*Abstract-Need/Uses:* Short, focused, limited surveys of NASA's customers conducted in response to E.O. 12862—NASA will use information collected to improve customer satisfaction with Agency's products and services.

Dated: July 21, 1995.

**Donald J. Andreotta,**

*Deputy Director, IRM Division.*

[FR Doc. 95-18849 Filed 7-31-95; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

#### Opera-Musical Theater Advisory Meetings

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 Opera-Musical Theater Advisory Panel (Professional Companies Sections A and B) to the National Council on the Arts will be held. Panel A will meet from 9 a.m. to 7:30 p.m. on August 8-10, and from 9 a.m. to 5 p.m. on August 11. Panel B will meet from 9 a.m. to 7:30 p.m. on August 14-16 and from 9 a.m. to 5 p.m. on August 17. This meeting will be held in Room M-07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 8 and 14 from 9 a.m. to 9:45 a.m. for orientation and introductory remarks and on August 11 and 17 from 3:45 p.m. to 5 p.m. for a policy discussion and guideline review.

The remaining portions of this meeting from 9:45 a.m. to 7:30 p.m. on August 8 and 14 from 9 a.m. to 7:30 p.m. on August 9, 10, 15 and 16 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 June 22, 1995, 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-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be maintained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5788.

Dated: July 26, 1995.

**Yvonne M. Sabine,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 95-18765 Filed 7-31-95; 8:45 am]

BILLING CODE 7537-01-M

**DEPARTMENT OF JUSTICE****Office of Justice Programs****National Institute of Justice**

[OJP (NIJ) No. 1056]

ZRIN 1121-ZA18

**National Institute of Justice Solicitation "Fellowship Opportunities at the National Institute of Justice"**

**AGENCY:** U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

**ACTION:** Announcement of the availability of the National Institute of Justice Solicitation "Fellowship Opportunities at the National Institute of Justice".

**ADDRESSES:** National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

**DATES:** The deadlines for receipt of proposals are close of business on September 15, 1995 and April 15, August 15 and December 16, 1996.

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

**Authority**

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201-03, as amended, 42 U.S.C. 3721-23 (1988).

**Background**

The National Institute of Justice is soliciting proposals from criminal justice professionals and scholars to undertake studies as part of NIJ's fellowship programs, which include the Visiting Fellowship Program, the Assistant Attorney General's Graduate Research Fellowship Program, the Graduate Research Fellowships at Historically Black Colleges and Universities, the Graduate Law Enforcement Technology Fellowship, the John B. Pickett Fellowships in Criminal Justice Policy and Management, and the NIJ Internship Program. Interested persons should call the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420 to obtain a copy of "Fellowship Opportunities at the National Institute of Justice" (refer to document No. SL000123). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301-

738-8895. Set modem at 9600 baud, 8-N-1.

**Jeremy Travis,**

*Director, National Institute of Justice.*

[FR Doc. 95-18756 Filed 7-31-95; 8:45 am]

BILLING CODE 4410-18-P

**National Institute of Justice**

[OJP (NIJ) No. 1057]

ZRIN 1121-ZA19

**National Institute of Justice Solicitation "NIJ Requests Proposals for Research in Action Partnerships"**

**AGENCY:** U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

**ACTION:** Announcement of the availability of the National Institute of Justice Solicitation "NIJ Requests Proposals for Research in Action Partnerships".

**ADDRESSES:** National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

**DATES:** The deadline for receipt of proposals is close of business on September 8, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Thomas, National Institute of Justice, at (202) 514-6206.

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

**Authority**

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201-03, as amended, 42 U.S.C. 3721-23 (1988).

**Background**

Through this solicitation the National Institute of Justice is seeking to encourage the development of partnerships with national professional and membership organizations representing the various professional groups within law enforcement and criminal justice or representing elected governmental officials at the State or local levels. Partnerships are sought with two goals in mind—to encourage the understanding and use of research results, and to encourage the use of new communications technologies. Interested persons should call the National Criminal Justice Reference Service (NCJRS) at 1-800-851-3420 to obtain a copy of "NIJ Requests Proposals for Research in Action Partnerships" (refer to document No. SL000128). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to

ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301-738-8895. Set modem at 9600 baud, 8-N-1.

**Jeremy Travis,**

*Director, National Institute of Justice.*

[FR Doc. 95-18755 Filed 7-31-95; 8:45 am]

BILLING CODE 4410-18-P

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 72-8 (50-317/318)]

**Baltimore Gas and Electric Co.; Issuance of Amendment to Materials License SNM-2505**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 1 to Materials License No. SNM-2505 held by Baltimore Gas and Electric Company for the receipt and storage of spent fuel at the Calvert Cliffs Nuclear Power Plant in an independent spent fuel storage installation (ISFSI), located in Calvert County, Maryland. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications in the license to exempt the first two dry shielded canisters (DSC) (Serial Nos. BGE 24P-R011 & BGE 24P-R002) from the Technical Specification limits on the vacuum drying process. The safety evaluation report on the amendment demonstrates that the first and second DSC meet the design criterion. The report also demonstrates that there is reasonable assurance that the public health and safety will not be endangered by activities authorized under this amendment and that the amendment will not have a significant impact on the human environment.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. In accordance with 10 CFR 72.46(b)(2), prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration. Interested persons may request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment will not result in any significant environmental

impact and that, pursuant to 10 CFR 51.21, an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated July 29, 1994, and additional information dated September 26 1994, and March 31, 1995, and (2) Amendment No. 1 to Materials License No. SNM-2505, with the Commission's letter to the licensee. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Local Public Document Room at the Calvert County Public Library, Fourth Street, PO Box 405, Price Frederick, Maryland 20678.

Dated at Rockville, MD., this 21st day of July 1995.

For the Nuclear Regulatory Commission,  
**William D. Travers,**  
*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*  
[FR Doc. 95-18806 Filed 7-31-95; 8:45 am]  
BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 328]

**Sequoyah Nuclear Plant Units 1 and 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-77 and DPR-79 issued to the Tennessee Valley Authority (the licensee) for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Soddy Daisy, Tennessee.

The proposed amendments would incorporate new requirements associated with steam generator tube inspections and repair in the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications. The new requirements would establish alternate steam generator tube plugging criteria at the tube support plate intersections.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the

facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free-span tubing (no tube support plate restraint) at room temperature conditions shows burst pressures in excess of 5,000 pounds per square inch (psi) for indications of outer diameter stress corrosion cracking with voltage measurements as high as 19 volts. Burst testing performed on intersections pulled from SQN with up to a 1.9-volt indication shows measured burst pressure in excess of 6,600 psi at room temperature. Burst testing performed on pulled tubes from other plants with up to 7.5-volt indications shows burst pressures in excess of 5,200 psi at room temperatures. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the safety-factor requirements of NRC Regulatory Guide (RG) 1.121.

Tube burst criteria are inherently satisfied during normal operating conditions because of the proximity of the tube support plate (TSP). Since tube-to-tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics that maintain a margin of safety of 1.43 times the bounding faulted condition steam line break (SLB) pressure differential. During a postulated SLB, the TSP has the potential to deflect during blowdown following a main SLB, thereby uncovering the TSP intersections.

Based on the existing database, the RG 1.121 criterion requiring maintenance of a safety factor of 1.43 times the SLB pressure differential on tube burst is satisfied by 7/8-inch-diameter tubing with bobbin coil indications with signal amplitudes less than 8.82 volts (WCAP-13990), regardless of the indicated depth measurement. A 2.0-volt plugging criterion (resulting in a projected end-of-cycle [EOC] voltage) compares favorably with the 8.82-volt structural limit considering the extremely slow apparent voltage growth rates and few numbers of indications at SQN. Using the established methodology of RG 1.121, the structural limit is reduced by allowances for uncertainty and

growth to develop a beginning of cycle (BOC) repair limit that would preclude indications at EOC conditions that exceed the structural limit. The nondestructive examination (NDE) uncertainty component is 20.5 percent, and is based on the Electric Power Research Institute (EPRI) alternate repair criteria (ARC).

Test data indicates that tube burst cannot occur within the TSP, even for tubes that have 100 percent throughwall electro-discharge machining notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Because of the few number of indications at SQN, the EPRI methodology of applying a growth component of 35 percent per effective full power year (EFPY) will be used. Near-term operating cycles at SQN are expected to be bounded by 1.23 years, therefore, a 43 percent growth component is appropriate. When these allowances are added to the BOC alternate plugging criteria (APC) of 2.0 volts in a deterministic bounding EOC voltage of approximately 3.26 volts for a Cycle 7, operation can be established. A 5.56-volt deterministic safety margin exists (8.82 structural limit—3.26-volt EOC equal 5.56-volt margin).

For the voltage/burst correlation, the EOC structural limit is supported by a voltage of 8.82 volts. Using this structural limit of 8.82 volts, a BOC maximum allowable repair limit can be established using the guidance of RG 1.121. The BOC maximum allowable repair limit should not permit the existence of EOC indications that exceed the 8.82-volt structural limit. By adding NDE uncertainty allowances and an allowance for crack growth to the repair limit, the structural limit can be validated. Therefore, the maximum allowable BOC repair limit (RL) based on the structural limit of 8.82 volts can be represented by the expressions:

$RL + (0.205 \times RL) + (0.43 \times RL) = 8.82$  volts, or, the maximum allowable BOC repair limit can be expressed as,

$RL = 8.82\text{-volt structural limit} / 1.64 = 5.4$  volts.

This RL (5.4 volts) is the appropriate limit for APC implementation to repair bobbin indications greater than 2.0 volts independent of rotating pancake coil (RPC) confirmation of the indication. This 5.4-volt upper limit for non-confirmed RPC calls is consistent with other recently approved APC programs (Farley Nuclear Plan, Unit 2).

The conservatism of the growth allowance used to develop the repair limit is shown by the most recent SQN eddy current data. Two tubes plugged in Unit 1 during the last outage had less than one volt of growth over the past five operating cycles. Only seven tubes in Unit 2 required repair because of outside diameter stress corrosion cracking (ODSCC) at the TSP intersections.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main SLB outside of containment, but upstream of the main steam isolation valve (MSIV), represents the most limiting radiological condition relative to the APC. Implementation of the APC will determine whether the distribution of cracking indications at the TSP intersections is projected to be such that primary-to-

secondary leakage would result in site boundary doses within a small fraction of the 10 CFR part 100 guidelines. A separate analysis has determined this allowable SLB leakage limit to be 4.3 gallons per minute (gpm) in the faulted loop. This limit uses the TS reactor coolant system (RCS) Iodine-131 activity level of 1.0 microcuries per gram dose equivalent Iodine-131 and the recommended Iodine-131 transient spiking values consistent with NUREG-0800. The analysis method is WCAP-14277, which is consistent with the guidance of the NRC draft generic letter (GL) and will be used to calculate EOC leakage. Because of the relatively low number of indications at SQN, it is expected that the actual leakage values will be far less than this limit. Additionally, the current Iodine-131 levels at SQN range from about 25 to 100 times less than the TS limit.

Application of the criteria requires the projection of postulated SLB leakage, based on the projected EOC voltage distribution for Cycle 8 operation. Projected EOC voltage distribution is developing using the most recent EOC eddy current results and a voltage measurement uncertainty. Data indicates that a threshold voltage of 2.8 volts would result in throughwall cracks long enough to leak at SLB condition. The draft GL requires that all indications to which the APC are applied must be included in the leakage projection. Tube pull results from another plant with  $\frac{7}{8}$ -inch tubing with a substantial voltage growth database have shown that tube wall degradation of greater than 40 percent throughwall was readily detectable either by the bobbin or RPC probe.

The tube with maximum throughwall penetration of 56 percent (42 average) had a voltage of 2.02 volts. The SQN Unit 1 pulled tube had a 1.93-volt indication with a maximum depth of 91 percent and did not leak at SLB condition. Based on the SQN pulled tube and industry pulled tube data supporting a lower threshold for SLB leakage of 2.8 volts, inclusion of all APC intersections in the leakage model is quite conservative. The ODSCC occurring at SQN is in its earliest stages of development. The conservative bounding growth estimations to be applied to the expected small number of indications for the upcoming inspection should result in very small levels of predicted SLB leakage. Historically, SQN has not identified ODSCC as a contributor to operational leakage.

In order to assess the sensitivity of an indication's BOC voltage to EOC leakage potential, a Monte Carlo simulation was performed for a 2.0-volt BOC indication. The maximum EOC voltage (at 99.8 percent cumulative probability) was found to be 4.8 volts. The leakage component from an indication of this magnitude, using either the NUREG-1477 or EPRI leakage models, is 0.12 or 0.028 gpm, respectively.

Therefore, as implementation of the 2.0-volt APC does not adversely affect steam generator (S/G) tube integrity and implementation will be shown to result in acceptable dose consequences, the proposed amendment does not result in significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Implementation of the proposed S/G tube APC does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism that could result in an accident outside of the region of the TSP elevations; no ODSCC is occurring outside the thickness of the TSP. Neither a single or multiple tube rupture event would be expected in a S/G in which the plugging criteria is applied (during all plant conditions).

TVA will implement a maximum leakage rate limit of 150 gallon per day per S/G to help preclude the potential for excessive leakage during all plant conditions. The SQN TS limits on primary-to-secondary leakage at operating conditions include a maximum of 0.42 gpm (600 gallons per day [gpd]) for all S/Gs, or a maximum of 150 gpd for any one S/G. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown is based upon leak-before-break considerations to detect a free-span crack before potential tube rupture during faulted plant conditions. The 150-gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 1.43 against bursting at faulted conditions maximum pressure differential. A voltage amplitude of 8.82 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95 percent prediction limit on the burst correlation coupled with 95/95 lower tolerance limit material properties. Alternate crack morphologies can correspond to 8.82 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 1.43 times the SLB pressure differential and the SLB pressure differential alone are approximately 0.57 inch and 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of 0.4-inch-long cracks at nominal leak rates and 0.6-inch-long cracks at the lower 95 percent confidence level leak rates. Since tube burst is precluded during normal operation because of the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during SLB conditions, the leakage from the maximum permissible crack must preclude tube burst at SLB conditions. Thus, the 150-gpd limit provides for plant shutdown before reaching critical crack lengths for SLB conditions. Additionally, this leak-before-break evaluation assumes that the entire crevice

area is uncovered during blowdown. Partial uncover will provide benefit to the burst capacity of the intersection.

As S/G tube integrity upon implementation of the 2.0-volt APC continues to be maintained through in-service inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Involve a significant reduction in a margin of safety.

The use of the voltage based APC at SQN is demonstrated to maintain S/G tube integrity commensurate with the criteria of RG 1.121. RG 1.121 describes a method acceptable to the NRC Staff for meeting General Design Criteria (GDC) 14, 15, 31, and 32 by reducing the probability or the consequences of S/G tube rupture. This is accomplished by determining the limiting conditions of degradation of S/G tubing, as established by in-service inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst-case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a S/G tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and radiological consequences are not adversely impacted.

In addressing the combined effects of loss-of-coolant accident (LOCA), plus safe shutdown earthquake (SSE) on the S/G component (as required by GDC 2), it has been determined that tube collapse may occur in the S/Gs at some plants. This is the case as the TSP may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate because of the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with S/G tube collapse. First, the collapse of S/G tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA, which in turn, may potentially increase peak clad temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, since the leak-before-break methodology is applicable to the SQN reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator line break or the pressurize surge line break. LOCA loads for the primary pipe breaks were used to bound the conditions at SQN for smaller breaks. The results of the analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in S/G tube collapse or significant deformation. The LOCA, plus SSE tube collapse evaluation performed for another plant with Series 51 S/Gs using

bounding input conditions (large-break loadings), is applicable to SQN. Therefore, at SQN, no tubes will be excluded from using the voltage repair criteria due to deformation of collapse of S/G tubes following a LOCA plus an SSE.

Addressing RG 1.83 considerations, implementation of the bobbin probe voltage based interim tube plugging criteria of 2.0 volt is supplemented by: (1) Enhanced eddy current inspection guidelines to provide consistency in voltage normalization, (2) a 100 percent eddy current inspection sample size at the TSP elevations, and (3) RPC inspection requirements for the larger indications left in service to characterize the principal degradation as ODS/C.

As noted previously, implementation of the TSP elevation plugging criteria will decrease the number of tubes that must be repaired. The installation of S/G tube plugs reduces the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom

of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 31, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be

entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a

hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Frederick J. Hebdon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Council, Tennessee Valley Authority, ET 11H, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 19, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, MD, this 26th day of July 1995.

For the Nuclear Regulatory Commission,  
**David E. LaBarge, Sr.**  
*Project Manager, Project Directorate II-3,  
 Division of Reactor Projects—I/II, Office of  
 Nuclear Reactor Regulation.*  
 [FR Doc. 95-18805 Filed 7-31-95; 8:45 am]  
 BILLING CODE 7590-01-M

[Docket No. 50-155]

**Consumer Power Co.; Big Rock Point Plant; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-6, issued to Consumers Power Company (the licensee), for operation of the Big Rock Point Plant, located in Charlevoix County, Michigan.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would revise the TS to conform to the wording of the revised 10 CFR part 20 which was published in the **Federal Register** on May 21, 1991 (56 FR 23391), and implemented at Big Rock Point on January 1, 1993. The proposed action would also change the TS to reflect a separation of chemistry and radiation responsibilities. The proposed action is in accordance with the licensee's application for amendment dated March 4, 1993, as revised April 14, 1993, and as supplemented April 19 and May 31, 1995.

*The Need for the Proposed Action*

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that with respect to the proposed action, in regards to the actual release rates as referenced in TS as a dose rate to the maximally exposed member of the public, there will be no increase in the probability or consequences of accidents, no changes in the types or amounts of any effluents that may be released offsite, and no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental

impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. 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 does not involve the use of any resources not previously considered in the Final Environmental Statement for the Big Rock Point Plant.

*Agencies and Persons Consulted*

In accordance with its stated policy, on July 17, 1995, the staff consulted with the Michigan State official, Robert DeHaan (acting for Dennis Hahn) of the Nuclear Facilities and Environmental Monitoring section office of the Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments. The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of no Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the application for amendment dated March 4, 1993, as revised April 14, 1993, as supplemented April 19 and May 31, 1995, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the North Central Michigan College, 1515

Howard Street, Petoskey, Michigan 49770.

Dated at Rockville, Md., this 26th day of July 1995.

For the Nuclear Regulatory Commission,

**John N. Hannon,**

*Director, Project Directorate III-1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95-18807 Filed 7-31-95; 8:45 am]

BILLING CODE 7590-01-M

### **Intent To Remove the United Technologies Pratt & Whitney Middletown, Conn. Site from the NRC Site Decommissioning Management Plan**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of intent to remove the United Technologies Pratt & Whitney Middletown, Connecticut site from the NRC Site Decommissioning Management Plan.

**SUMMARY:** This is a notice to inform the public that the U.S. Nuclear Regulatory Commission is considering removing the United Technologies Pratt & Whitney Middletown, Connecticut site from the NRC Site Decommissioning Management Plan (SDMP). The NRC expects to determine that remediation of residual radioactive contamination in a building on the site has successfully been completed and the facility meets the current NRC criteria for release for unrestricted use.

**DATES:** The NRC hereby provides notice of an opportunity to comment on the proposed NRC action. Comments must be submitted within thirty (30) days of the date of publication of this **Federal Register** notice.

**ADDRESSES:** Written comments should be sent to USNRC, Region I, Attn: Mark Roberts, Senior Health Physicist, 475 Allendale Road, King of Prussia, Pennsylvania 19406. Hand deliver comments to 475 Allendale Road, King of Prussia, PA 19406 between 7:45 a.m. and 4:15 p.m. on Federal workdays.

**FOR FURTHER INFORMATION CONTACT:** Mark Roberts, Division of Radiation Safety and Safeguards, USNRC, Region I, 475 Allendale Road, King of Prussia, PA 19406, Telephone: (610) 337-5094.

**SUPPLEMENTARY INFORMATION:** The United Technologies Pratt & Whitney site in Middletown, Connecticut was identified in 1992 by the NRC as a site where residual radioactive contamination might be present above NRC criteria as a result of past operations. Radioactive contamination was identified by Pratt & Whitney in

one of the buildings on the site. In order to ensure that remediation of the building was accomplished in a timely manner, the NRC added this site to its SDMP. Pratt & Whitney has remediated residual contamination in the building, performed radiological surveys in that building and other buildings where radioactive materials may have been used, and requested by letter dated April 27, 1995, that the NRC remove the Middletown, Connecticut site from the SDMP. The request before the NRC at this time is to concur with the view of Pratt & Whitney that the site meets the current criteria for release for unrestricted use and thus can be released for unrestricted use and removed from the SDMP.

The staff of the NRC's Region I Division of Radiation Safety and Safeguards has reviewed and approved various remediation activities since 1992. The staff has also reviewed various records of past activities at the site and the radiological surveys performed by Pratt & Whitney's contractor and conducted confirmatory radiological measurements at the site. The NRC staff has not yet completed all of these reviews, but, based on information available at this time, expects to determine that the facility meets the requirements for release for unrestricted use and to remove the site from the SDMP in 1995.

For further details with respect to this action, documents are available for inspection at the NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406. Persons desiring to review documents at the Region I Office should call Ms. Cheryl Buracker at (610) 337-5093 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, MD, this 26th day of July, 1995.

For the Nuclear Regulatory Commission.

**Michael F. Weber,**

*Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 95-18809 Filed 7-31-95; 8:45 am]

BILLING CODE 7590-01-P

### **Review of Revised NRC Systematic Assessment of Licensee Performance (SALP) Program**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is reviewing its Systematic Assessment of Licensee

Performance (SALP) program that was last revised on May 19, 1993. Public comments are requested on the revised program and its implementation. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens. Comments received will be used in the NRC's review of the SALP program.

**DATES:** The comment period expires August 31, 1995. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Submit written comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Office of Administration, Mail Stop: T-6D-59, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David L. Gamberoni, Mail Stop: O-12E-4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415-1144.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Office of Nuclear Reactor Regulation (NRR) has begun a review of the implementation of the SALP program. The SALP program was revised on May 19, 1993, to improve the focus on significant performance issues, communication with licensees, and licensees' and the public's understanding of SALP results. Specific program changes included reducing the number of functional areas from seven to four, changing the board membership to Senior Executive Service (SES) members, shortening the SALP report, eliminating the draft initial report, changing the nature of the SALP meeting with the licensee from a presentation to more of a discussion, and focusing on the last six months of performance. Implementation of the revised program began for assessment periods ending after July 19, 1993.

This review will attempt to determine if the revisions to the SALP program have been effective in focusing the SALP reports on significant performance issues and have resulted in

better communication with the licensees and the public, leading to a better understanding of SALP results.

The NRC SALP program objectives are:

(1) To conduct an integrated assessment of licensee safety performance that focuses on the safety significance of the NRC findings and conclusions during an assessment period;

(2) To provide a vehicle for meaningful dialogue with the licensee regarding its safety performance based on the insights gained from synthesis of NRC observations;

(3) To assist NRC management in making sound decisions regarding allocation of NRC resources used to oversee, inspect, and assess licensee performance; and

(4) To provide a method for informing the public of the NRC's assessment of licensee performance.

The SALP program guidance is located in NRC Management Directive 8.6, "Systematic Assessment of Licensee Performance (SALP)," approved July 14, 1993.

#### Scope of the Review

This review will focus primarily on the effectiveness of the May 19, 1993, changes. General feedback on the SALP program is also invited. Additional detail on the scope of the review is given in the questions below. Commenters are not obligated to and need not address every issue.

In providing comments, please key your response to the number of the applicable question (e.g., "Response to A.1"). Comments should be as specific as possible. The use of examples is encouraged.

Comments are requested on the following issues:

#### A. Functional Areas

1. Are the current four functional areas (operations, maintenance, engineering, and plant support) an improvement compared to the previous seven functional areas?

2. Are the plant support functional area messages clear in characterizing individual elements (radiological controls, emergency preparedness, security, fire protection, chemistry, and housekeeping)?

3. Are additional improvements needed for the designation of functional areas? What types of improvements?

#### B. Management Involvement

1. Did increased NRC management involvement in the SALP program result in program improvements and improved communication with licensee management?

2. Did the SALP program changes result in better licensee and public understanding of the SALP results?

3. Did increased involvement of the regional administrator or deputy at the SALP meeting result in improved communication with licensee management?

4. Was the change in SALP presentation meeting format—from a presentation to more of a discussion—effective in improving communication with licensee management?

5. Are additional improvements needed in the areas of communications with licensee management and licensee and public understanding of SALP results? What types of improvements?

#### C. Assessment Period

1. What bases should be considered when determining SALP period length and how should they be applied?

2. SALP assessments currently range from 12 to 24 months (nominally 18 month average). Is this variation in practice appropriate?

3. How long should the SALP assessment period be for good, average, and poor performing plants?

#### D. SALP Report

1. Are the new, shorter SALP reports more effective in communicating the results of the NRC's assessment of safety performance than the previous, more lengthy reports?

2. Are SALP reports appropriately focused on safety issues and do they deliver a clear message?

3. Do SALP reports provide a balanced assessment of licensee safety performance (and are positive aspects of licensee safety performance appropriately considered)?

4. Do SALP reports consistently focus on the last six months of performance? Is this practice appropriate?

5. Is the level of detail in the SALP report appropriate?

6. Are SALP report conclusions well-supported by documented facts?

7. Are SALP report cover letter messages consistent with the associated SALP report messages?

8. Are licensee self-assessment efforts adequately recognized in the SALP report and cover letter?

9. Are additional improvements needed in the SALP reports? What types of improvements?

#### E. Additional Comments

In addition to the above issues, commenters are invited to provide any other views on the NRC SALP program that could assist the NRC in improving its effectiveness.

Dated at Rockville, MD, this 26th day of July 1995.

For the Nuclear Regulatory Commission.

**Richard W. Borchardt,**

*Chief, Inspection Program Branch, Directorate for Inspection and Support Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 95-18808 Filed 7-31-95; 8:45 am]

BILLING CODE 7590-01-P

## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974; Add a Record System

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice to add a record system.

**SUMMARY:** OPM proposes to add one system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency.

**DATES:** The proposed system of records will be effective without further notice on August 31, 1995, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send written comments to Office of Personnel Management, ATTN: Leslie Crawford (Freedom of Information/Privacy Act Coordinator), Office of Information Technology, 1900 E Street NW., CHP 500, Washington, DC 20415-0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Leslie Crawford at (703)908-8565.

**SUPPLEMENTARY INFORMATION:** The system notice is published under the requirements of the Privacy Act (5 U.S.C. 552a(e)(4)). This notice covers records that may contain individually identifiable information about health care providers (physicians, hospitals and other individuals or entities which furnish health care services or supplies) and other participants excluded from participation in the Federal Employee Health Benefits Program (FEHBP), and other federally authorized financial and nonfinancial assistance and benefits under programs and activities (nonprocurement) administered by OPM. Exclusion may be based on debarment or suspension, ineligibility, or for other reasons.

OPM's Internal and Central system notices were previously published in the **Federal Register** in full on April 12, 1993 (58 FR 19154). OPM's Governmentwide system notices were last published in full on August 10, 1992 (57 FR 35698), with a correction

published on November 30, 1992 (57 FR 56733).

Office of Personnel Management.

**Lorraine A. Green,**  
*Deputy Director.*

#### OPM/CENTRAL-14

##### SYSTEM NAME:

Debarment or Suspension Records for Federal Employees Health Benefits Program (FEHPB).

##### SYSTEM LOCATION:

Administrative Sanctions Branch, Office of the Inspector General, Office of Personnel Management, 1900 E Street, NW., Room CHP 1314, Washington, DC 20415-0001.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health care providers (physicians, hospitals and other individuals or entities which furnish health care services or supplies) and other participants who have been or are in the process of being debarred, suspended, determined to be ineligible, or otherwise excluded from participating in the Federal Employee Health Benefits Program (FEHBP), and other federally authorized financial and nonfinancial assistance and benefits under programs and activities (nonprocurement) administered by OPM.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains a listing of health care providers and other participants, debarred, suspended, determined to be ineligible, or otherwise excluded from participation in the FEHBP and other federally authorized financial and nonfinancial assistance and benefits under programs and activities (non-procurement) administered by OPM. It includes records such as general correspondence, statements of cause, case files, and other related documents.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM INCLUDES THE FOLLOWING WITH ANY REVISIONS OR AMENDMENTS:

5 U.S.C. Appendix 3, Executive Orders 12549 and 12689, and 5 CFR part 970.

##### PURPOSE:

Executive Orders 12549 and 12689 provide that Executive departments and agencies participate in a governmentwide system for nonprocurement debarment and suspension. This system of records documents OPM's participation in the program to reduce fraud and abuse in Federal nonprocurement programs and decisions regarding actions taken to

exclude participants in Federally authorized nonprocurement programs administered by OPM.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where OPM becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

c. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

d. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

e. To disclose information to the National Archives and Records Administration for use in records management inspections.

f. By OPM in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which OPM is authorized to appear, when:

(1) OPM, or any component thereof; or

(2) Any employee of OPM in his or her official capacity; or

(3) Any employee of OPM in his or her individual capacity where the Department of Justice or OPM has agreed to represent the employee; or

(4) The United States, when OPM determines that litigation is likely to affect OPM or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or OPM is deemed by OPM to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

h. To disclose information to officials of the Merit Systems Protection Board or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions, e.g., as promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

i. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, compliance by Federal agencies with the Uniform Guidelines on Employee Selection Procedures or other functions vested in the Commission and to otherwise ensure compliance with the provisions of 5 U.S. 7201.

j. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

k. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

l. To disclose records to appropriate Federal, State and local agencies if necessary and relevant to administering Federal financial or nonfinancial assistance programs or benefits.

m. To disclose records for performance of a Federal duty to a State or local agency, or financial institution.

n. To disclose information on excluded health care providers to other persons involved in or affected by the action.

o. To disclose information to agencies or organizations that license, certify, regulate, investigate, or prosecute persons or organizations that provide health-related services or items to

determine possible disqualifying actions, practices, or conditions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

These records are maintained in paper copy and automated form.

**RETRIEVABILITY:**

These records are retrieved by name, address, occupation, Social Security Number, and case number.

**SAFEGUARDS:**

Paper records are stored in lockable filing cabinets or secured rooms. Automated records are protected by ID/password security system. Records are available only to those persons whose official duties require access.

**RETENTION AND DISPOSAL:**

Records are placed in inactive files (cut at the end of each fiscal year) when the case is closed. Inactive records are destroyed after 10 years.

**SYSTEM MANAGER AND ADDRESS:**

Chief, Administrative Sanctions Branch, Office of the Inspector General Office of Personnel Management, 1900 E Street, NW., Room CHP 1314, Washington, DC 20415-0001.

**NOTIFICATION PROCEDURE:**

Individuals wishing to determine whether this system of records contains information on them should contact the system manager indicated above. Individuals must furnish the following for their records to be located and identified:

- a. Full name.
- b. Case number, if applicable.
- c. Address.
- d. Date of Birth.
- e. Social Security Number and Tax Identification Number.
- f. Health Insurance related Identification Number.

**RECORD ACCESS PROCEDURE:**

Individuals wishing to request access to records should contact the system manager indicated above. Individuals must provide the following information for their records to be located and identified:

- a. Full name.
- b. Case number, if applicable.
- c. Address.
- d. Date of Birth.
- e. Social Security Number and Tax Identification Number.
- f. Health Insurance related Identification Number.

Individuals requesting access must also follow the OPM's Privacy Act

regulations regarding verification of identity and access to records (5 CFR part 297).

**CONTESTING RECORD PROCEDURE:**

Individuals wishing to request amendment of records should contact the system manager indicated above. Individuals must furnish the following information for their records to be located and identified:

- a. Full name.
- b. Case number, if applicable.
- c. Address.
- d. Date of Birth.
- e. Social Security Number and Tax Identification Number.
- f. Health Insurance related Identification Number.

Individuals requesting amendment must also follow the OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR 297).

**RECORD SOURCE CATEGORIES:**

Information in this system of records is obtained from:

- a. The individual(s) to whom the record pertain(s).
- b. Federal agencies.
- c. State and local law enforcement officials.
- d. Private agencies and organizations.

[FR Doc. 95-18708 Filed 7-31-95; 8:45 am]

BILLING CODE 6325-01-M

**POSTAL SERVICE**

**Verification Procedures for Second-Class Publications**

**AGENCY:** Postal Service.

**ACTION:** Notice of revised procedures.

**SUMMARY:** On January 20, 1995, the Postal Service published a notice for public comment in the **Federal Register** (60 FR 4207-4208) concerning revised procedures for conducting verifications of publications authorized for mailing at second-class postage rates. Under the revised procedures, the Postal Service will separate the verification process into two reviews, one for validating correct postage payment and one for determining continued eligibility for second-class authorizations. A postage payment review will be conducted at least once a year for each authorized second-class publication. An eligibility review will be conducted as determined by the Postal Service from circulation data provided by the publisher of an authorized second-class publication.

**EFFECTIVE DATE:** August 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Mayhew, (212) 613-8747.

**SUPPLEMENTARY INFORMATION:**

In accordance with its statutory responsibilities, the Postal Service must ensure that authorized second-class publications meet all applicable second-class eligibility requirements and that the proper amount of postage is paid on mailings of those second-class publications. See 39 U.S.C. 404, 3685.

The physical inspection of mailings of second-class publications and the examination of records and documentation related to those mailings have been the principal means used by the Postal Service to carry out its statutory responsibilities. A long-standing goal of the Postal Service has been to review all publications on an annual basis. An annual review of every publication, however, has not always been possible at all post offices, particularly those offices where large numbers of different publications are entered at second-class rates.

**1. Background**

Currently, the Postal Service schedules a second-class publication for review every 1 to 3 years, depending on the number of second-class publications authorized original entry at the post office conducting the review. For the issue of the publication to be examined, the review centers on these two activities:

a. Substantiating that the publication meets second-class eligibility requirements, particularly circulation requirements.

b. Verifying that the mailing statement submitted with the mailing of the publication is complete and the postage payment correct.

After a careful analysis of its review procedures for second-class publications, the Postal Service determined that the current procedures no longer promote the most efficient use of postal resources. On one hand, the Postal Service believes that, for some publications, eligibility reviews do not serve a significant purpose. Where other evidence provides assurance that a publication remains eligible for second-class mailing privileges, an on-site review simply confirms a fact already known. On the other hand, the Postal Service believes that annual postage payment reviews for all publications not only confirm the accuracy of postage payment but also prevent a potential for long-term accumulations of any revenue deficiency that might be discovered during the reviews.

Accordingly, the Postal Service proposed revising its review procedures for second-class publications by separating the procedures along the lines of the two review activities, each

with different scheduling criteria as follows:

a. For the eligibility review, an annual review is to be conducted only for publications with a confirmed legitimate circulation of 60 percent or less on randomly selected issues.

b. For the postage payment review, an annual review is to be conducted for all publications, regardless of the percentage of confirmed legitimate circulation.

The proposed changes sought to shift postal personnel and other resources from verifications that serve limited purposes (that is, eligibility reviews that only confirm independent assurances of continued second-class eligibility) to verifications that respond to concerns about revenue protection (that is, postage payment reviews that uncover potential revenue deficiencies).

## 2. Revised Procedures

The revised review procedures will separate the postage payment review from the eligibility review. Each second-class publication will receive an annual postage payment review at each post office where second-class postage is paid. This review will be conducted at the time of mailing. Publishers claiming automation and presort rates will also be required, at the time of the postage payment review, to submit documentation substantiating eligibility for those rates. This documentation consists of the same documentation already required under current procedures.

For those publications subject to circulation standards (general, requester, institutions and societies, and some foreign), the Postal Service will determine whether to conduct an eligibility review by using the data provided by the publisher on PS Form 3526, Statement of Ownership, Management, and Circulation (that is, a review will be scheduled according to the percentage of paid or requested circulation shown on the form). The Postal Service still retains its right, however, to review a publication if a question arises about the eligibility of that publication for second-class mailing privileges, regardless of the data provided on PS Form 3526.

When a second-class publication is selected for an eligibility review, the publisher will be notified by the post office serving the known office of publication. The publisher will be advised of the issue to be verified. To conduct the review as quickly and efficiently as possible, the Postal Service will ask the publisher to provide circulation information before the review date. For this purpose, the Postal

Service has revised PS Form 3548, Review and Verification of Circulation.

Accordingly, the original entry post office will mail the publisher a blank PS Form 3548 with a cover letter asking the publisher to complete the unshaded parts of the form for a specified publication issue. The publisher will have 15 days from the receipt of the form to complete and return the form to the postmaster of the original entry office.

The unshaded parts of PS Form 3548 filled in by the publisher will contain information about the total distribution of the issue to be reviewed. A Postal Service representative will examine the circulation records at the known office of publication to verify compliance with circulation requirements.

Publications reviewed by Postal Service-approved independent audit bureaus will continue to have their eligibility and postage payment reviews conducted by those bureaus. Consistent with current practice, the Postal Service still retains the right to review the records of any publication and to reach its own conclusion about compliance of the publication with the applicable eligibility requirements. Publications mailed under the Centralized Postage Payment System will continue to have postage payment reviews conducted annually by the New York Rates and Classification Service Center.

## 3. Public Comments

The comment period ended on February 21, 1995, and only three written comments were received. After thorough consideration of those comments, the Postal Service adopts the revised procedures as proposed.

The first commenter did not object to the separation of the review process into eligibility and postage payment reviews but did object to what the commenter viewed as "the proposed weakening of current second-class subscriber verification procedures." The commenter expressed concerns that the Postal Service would determine which publications to review by relying solely on data provided by publishers on PS Form 3526, Statement of Ownership, Management, and Circulation. The commenter asserted that reliance on such data "is inadequate to police those who misstate circulation data so as to qualify improperly for second-class mailing privileges." The commenter also objected to the Postal Service policy concerning the release of second-class mailing statements under the Freedom of Information Act.

As an initial matter, the Postal Service plans to conduct eligibility reviews of publications whenever it believes that

valid reasons exist for such reviews, regardless of the data provided by a publisher on Form 3526. The Postal Service agrees with the commenter that the vast majority of publishers file honest reports and strongly believes that this practice will not change with the revised review procedures. Those publishers tempted to deceive the Postal Service under the revised procedures can just as readily provide false information under current procedures. Criminal and civil fraud provisions, however, provide a strong deterrent to such activity.

As far as the commenter's objection to Postal Service policy on the release of mailing statements under the Freedom of Information Act, a response to that objection is outside the scope of this notice.

The second commenter expressed concerns that the Postal Service was "moving backward" in its attempt to conduct reviews of authorized publications. The commenter predicted that, under the revised review procedures, entry post offices serving publishers' printers and fulfillment houses would be overwhelmed with publication issues to be verified. Such a large number of postage payment reviews to be conducted at one time would, according to the commenter, delay the processing of publications not having appropriate documentation to support analyses of zone-rated advertising portions in the publications.

The Postal Service assures publishers that the revised review procedures have been tested and that they will not cause congestion or processing delays at business mail entry units or detached mail units. The documentation from which the review data will be drawn is the same documentation required with the mailing of a publication under current procedures. The Postal Service wishes to remind publishers that although some shift in the number of reviews will occur at certain post offices, only one issue of a publication will be reviewed each year and publishers will receive prior notification of the review date.

The third commenter remarked that the revised procedures are too burdensome because they impose "a new level of review on second-class publications" and because they eliminate the "responsibility bulk mail acceptance clerks have for the information and advice they give mailers." The commenter, while "agree[ing] with the philosophy" that the Postal Service should conduct eligibility reviews "according to its judgment of the necessity for the review," asserted that some publishers

mail publications that do not always qualify for second-class rates and that revocations of second-class mailing privileges take an average of 10 years, with a minimum of 6 years.

The Postal Service believes that the revised review procedures do not entail an additional level of review. Postage payment reviews have been a long-standing part of Postal Service audits of second-class publications. The revised procedures ensure that all publications are reviewed on a uniform annual basis in contrast to the current system in which some publications are reviewed at least three times as often as others.

The Postal Service also believes that the commenter's concerns that the procedure will add an extra layer of staff effort and increase handling costs is unfounded. The revised review procedures simply reallocate current resources to more productive functions. These procedures do not lessen the responsibility of acceptance clerks, who perform an important role at the deposit point in examining the mail for proper preparation. These clerks cannot be expected, however, to uncover all possible errors during their reviews. To do so would require an in-depth scrutiny that increases considerably the cost of reviews, if done on each mailing, and delays the acceptance and processing of the mailing.

With respect to the comment about the responsibility of postal employees providing accurate information, the Postal Service believes that the commenter is concerned that the revised procedures will increase revenue deficiency assessments and possibly even criminal penalties, both of which the commenter finds objectionable in cases where a postal employee makes an error in calculating postage or accepting the mail or the employee provides incorrect advice to a publisher about second-class eligibility requirements. This commenter's concerns suggest that the Postal Service audit its own acceptance practices at postal facilities and devote more resources to training employees.

The commenter's suggestions about examining acceptance procedures at business mail entry units and improving employee training are well taken. The Postal Service does, in fact, conduct frequent audits of mail acceptance procedures at its facilities. The Postal Service also provides training for postal employees throughout the year, using classroom and on-the-job instruction to convey the intent of new and current programs, policies, and procedures.

With respect to the concerns about the imposition of a revenue deficiency where a mailer has relied on the advice

of a postal employee, the Postal Service notes, as in prior rulemakings, that the Postal Service is required to collect debts owed to it but will consider requests for relief or compromise of deficiencies on a case-by-case basis, consistent with existing policies. See 59 FR 23161-23162 (May 5, 1994).

An annual postage payment review will facilitate the discovery of preparation problems. Although this review, on occasion, might result in the assessment of a revenue deficiency, an annual review avoids the expense and processing delays associated with in-depth reviews of each mailing. An annual review also ensures that all publishers operate under the same rules, consistent with the commenter's belief that the eligibility rules for second-class mailing privileges should be enforced uniformly.

Although the average revocation action does not approach the age estimated in the comment, the Postal Service acknowledges that venerable cases exist. The Postal Service is making efforts to expedite these cases while complying with its obligation to afford all publishers due process.

Appropriate procedures to reflect these changes will be implemented upon publication of this notice.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 95-18761 Filed 7-31-95; 8:45 am]

BILLING CODE 7710-12-P

### Privacy Act of 1974; System of Records

**AGENCY:** Postal Service.

**ACTION:** Notice of the addition of three new routine uses in a system of records.

**SUMMARY:** This document publishes notice of the addition of three new routine uses to Privacy Act system of records USPS 120.140, Personnel Records—Employee Assistance Program (EAP) Records. One routine use permits disclosure to a contractor and is adopted to support administration and evaluation of the Postal Service's EAP by the Public Health Service (PHS) and by private contractors. The other two routine uses support disclosures allowed by PHS and Postal Service regulations. One permits disclosure to medical personnel to the extent necessary to meet a medical emergency. The other one allows disclosure to qualified personnel for purposes of conducting research, audit, or program evaluation.

**DATES:** This proposal will become effective without further notice September 11, 1995, unless comments

received on or before that date result in a contrary determination.

**ADDRESSES:** Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260-5242. Copies of all written comments will be available for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Betty E. Sheriff at (202) 268-2608.

**SUPPLEMENTARY INFORMATION:** The Division of Federal Occupational Health of the PHS largely administers the Postal Service's new EAP, providing counseling and other assistance to all postal employees and their family members. EAP services are also available to employees and family members under nine pilot programs administered by private contractors or in-house by the Postal Service. In order for contractors to provide program services or other legitimate agency functions, such as program evaluation, the Postal Service must release to the contractors relevant information from EAP records. New routine use No. 1 allows such disclosure. The Postal Service applied this routine use to most of its systems of records in its last compilation of records systems published in the **Federal Register** on October 26, 1989 (54 FR 43652-43715).

In addition, PHS and Postal Service regulations applicable to program records allow disclosure without patient consent to medical personnel in medical emergencies and for research, audit, and evaluation activities. Although these disclosures are permitted to some extent by exceptions within the Privacy Act, new routine uses No. 2 and No. 3 are added to clearly permit disclosures that conform with PHS and Postal Service regulations.

The system changes are not expected to have any effect on individual privacy rights. EAP participant records are protected by federal law and regulations, and these records receive the highest degree of confidentiality. Contractors who receive information pursuant to new routine use No. 1 are made subject to subsection (m) of the Privacy Act and are required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service. An interagency agreement between the Postal Service and the PHS also contains provisions requiring procedures for safeguarding the confidentiality of EAP records and restricting disclosure by the PHS without Postal Service approval. In

addition, the PHS, as a federal agency, is governed by the Privacy Act with respect to the handling of such records.

Routine use No. 2 parallels the compelling circumstances exception in the Privacy Act and is adopted in conformance with PHS and Postal Service regulations allowing disclosure in medical emergency situations. Disclosure is limited to that information necessary to meet the emergency.

Similarly, disclosure under routine use No. 3 is permitted by Postal Service and PHS regulations and, to some extent, by an exception in the Privacy Act. Postal Service regulations provide that records of evaluation, research, or audit resulting from a disclosure under routine use No. 3 may not contain personal identifying information.

Pursuant to 5 U.S.C. 552a(r) and paragraph 4.c.(1)(f) of Appendix 1 of Office of Management and Budget Circular A-130, Federal Information Resources Management, interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

The most recent description of USPS 120.140 appears at 56 FR 21396 dated May 8, 1991. It is proposed that routine uses No. 1, No. 2, and No. 3 be added as follows to that system description:

#### USPS 120.140

##### SYSTEM NAME:

Personnel Records—Employee Assistance Program (EAP) Records, 120.140.

\* \* \* \* \*

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records or information from this system may be disclosed to an expert, consultant, or other individual who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any individual with whom the Postal Service contracts to reproduce by typing, photocopying, or other means any records for use by Postal Service officials in connection with their official duties or to any individual who performs clerical or stenographic functions relating to the official business of the Postal Service.

2. Records or information from this system may be made to medical personnel to the extent necessary to meet a medical emergency involving the participant.

3. Non-identifying records or information from this system may be disclosed to qualified personnel for purposes of research, audit, or program evaluation.

\* \* \* \* \*

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 95-18848 Filed 7-31-95; 8:45 am]

BILLING CODE 7710-12-P

## SECURITIES AND EXCHANGE COMMISSION

### Requests Under Review by the Office of Management and Budget

Agency Clearance Officer: Michael E. Bartell, (202) 942-8800

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street NW., Washington, D.C. 02549

Proposed Amendments to:  
Form N-1A, File No. 270-21  
Form N-3, File No. 270-281  
Form 12b-25, File No. 270-71

Proposed New Rule:  
Rule 30b3-1, File No. 270-402

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval proposed amendments and a new proposed rule for the following:

Form N-1A is the registration form used by open-end management investment companies ("mutual funds") to comply with the registration statement requirements of the Investment Company Act of 1940 ("1940 Act") and to register their securities under the Securities Act of 1933 ("1933 Act"). Form N-1A permits mutual funds, including money market funds, to provide investors with a simplified prospectus covering matters of fundamental importance about the funds. More detailed information is provided to interested investors through the Statement of Additional Information ("SAI").

The proposed amendments would primarily affect money market funds. The amendments are intended to shorten and simplify prospectuses for money market funds by permitting the funds to transfer substantial amounts of detailed information regarding their investment policies and operations to the SAI, and by otherwise simplifying the form's requirements and instructions. While prospectuses are widely distributed by funds to

shareholders and potential investors, the SAI need only be made available to investors upon request. As a result, it is believed that the approximately 1,300 money market funds subject to Form N-1A's requirements would experience reduced printing and mailing costs associated with a briefer prospectus. There would be no reduction or increase in the reporting burden incurred by money market funds when they file their Form N-1A registration statements with the Commission because the funds would continue to be required to provide almost all of the information eliminated from the prospectus in the SAI. As a result, the estimated reporting burden for a money market fund filing Form N-1A if the proposed amendments are adopted would continue to be 1,064.24 hours.

Similar amendments are being proposed to Form N-3, the registration form used by separate accounts organized as management investment companies ("separate accounts") to comply with the registration statement requirements of the 1940 Act and to register their securities under the 1933 Act. These amendments would shorten the prospectuses of separate accounts that are money market funds and the 53 separate money market accounts subject to Form N-3's requirements would experience a reduction in printing and mailing costs associated with a briefer prospectus. As described above with regard to Form N-1A, there will be no change in the burden associated with filing Form N-3 registration statements with the Commission because filers would continue to be required to provide almost all of the information eliminated from the prospectus in the SAI. As a result, the estimated reporting burden for a money market account filing Form N-3 if the proposed amendments are adopted would continue to be 518 hours.

Additional amendments are being proposed that would not impose any additional recordkeeping or reporting burden on funds.

Rule 12b-25 under the Securities Exchange Act of 1934 ("1934 Act") prescribes the manner in which notification should be given to the Commission when certain reports required by the 1934 and 1940 Acts and rules thereunder are filed late. Form 12b-25 is a notification of the late filing by a registrant. All burdens associated with Rule 12b-25 are reflected in the burdens reports for Form 12b-25. Under current burden estimates, 4,266 respondents file Form 12b-25 annually at 2.5 burden hours per response with a total annual burden of 10,655 hours. Under the amendment to form 12b-25

being proposed, it is estimated that an additional 220 respondents will file Form 12b-25 annually at 2.5 burden hours per response, for an additional annual burden of 550 hours, and a revised total burden of 11,105 hours.

Proposed Rule 30b3-1 requires money market funds to file quarterly reports with the Commission detailing their portfolio holdings. This information will better enable the Commission to detect and deter money market fund non-compliance with the federal securities laws, particularly Rule 2a-7 under the 1940 Act, the rule which restricts the types of instruments in which money market funds can invest. The reports would be filed electronically through the Commission's electronic filing system, called EDGAR (Electronic Data Gathering, Analysis and Retrieval). It is estimated that 1,300 respondents will file the report four times a year at 2 burden hours per response for a total burden of 10,400 hours annually.

General comments and comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and the Clearance Officer for the SEC, Project Numbers 3235-0307 (Form N-1A), 3235-0316 (Form N-3), and 3235-0058 (Form 12b-25), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20543.

Dated: July 24, 1995.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 95-18815 Filed 7-31-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36025; File No. SR-NASD-95-32]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Schedule A of the By-Laws Concerning Registration and Filing Fees**

July 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 20, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described

in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under § 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The NASD is, however, requesting that the fee be implemented on August 1, 1995. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD is proposing to amend Section 2 to Schedule A of the By-Laws to temporarily increase certain filing fees to recover the costs associated with the redesign of the Central Registration Depository ("CRD"). Proposed new language is italicized, proposed deletions are in brackets.

**Schedule A**

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

\* \* \* \* \*

**Fees**

Sec. 2.

\* \* \* \* \*

(b) Each member shall be assessed a fee of [\$65.00] *\$85.00* for each application filed with the Association for registration of a registered representative or registered principal from August 1, 1995 through December 31, 1996. *Such fee shall be \$70.00 from January 1, 1997 through December 31, 1997 and shall be \$65.00 thereafter.* Additionally, each member shall be assessed a surcharge of [\$85.00] *\$95.00* for registrations involving a special registration review *filed with the Association from August 1, 1995 through December 31, 1997 and shall be \$85.00 thereafter.* The following shall apply to the filing of applications to re-register or transfer the registration of registered persons or registered principals in connection with acquisition of all or a part of a member's business by another member:

No. of registered personnel transferred	Discount (percent)
1,000-1,999 .....	10
2,000-2,999 .....	20
3,000-3,999 .....	30
4,000-4,999 .....	40
5,000 and over .....	50

(h) (i) Each member shall be assessed a fee of [\$25.00] *\$40.00* for each notice

of termination of a registered representative or registered principal filed with the Corporation as required by Section 3 of Article IV of the By-Laws from August 1, 1995 through December 31, 1996. *Such fee shall be \$35.00 from January 1, 1997 through December 31, 1997 and shall be \$25.00 thereafter.*

(ii) A late filing fee of [\$50.00] *\$65.00* shall be assessed a member who fails to file with the Corporation written notice of termination of a registered representative or registered principal within thirty (30) calendar days of such termination from August 1, 1995 through December 31, 1996. *Such fee shall be \$60.00 from January 1, 1997 through December 31, 1997 and shall be \$50.00 thereafter.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The NASD has a major systems development project underway to completely redesign the CRD. The CRD is a computerized system for one-stop registration and licensing of NASD members and their associated persons. The system was developed in 1981 to standardize and streamline the registration process by accommodating a single filing and payment of fees for registration in multiple jurisdictions. Today the system processes filings on behalf of 50 states, the District of Columbia and Puerto Rico, seven (7) self-regulatory organizations and the SEC.

The redesigned CRD, scheduled for a staged implementation in 1996-1997, will feature electronic filings, re-engineered work processes, expedited relicensing and a highly structured, relational database to better serve the information requirements of regulators, members and investors. In addition, the new system will include investment adviser registration for the SEC and states, an E-mail communication

capability for system participants and a document imaging/storage/retrieval service for support documents required in certain filing situations.

The NASD had originally intended to fund the CRD redesign effort from the current registration filing fees based on expected activity levels in the 1995-1997 period. In 1995 registration activity declined significantly, and the resulting lower revenue levels are now expected to continue through 1997. The NASD believes it is necessary to institute the temporary fee increase in order to continue the investment in this important systems project. The temporary fees will be implemented on August 1, 1995, and will apply to all filings received on or after that date. The fee increase will be reduced for most types of filings made in calendar 1997 and will return to their current levels in calendar 1998.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act<sup>1</sup> which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges in that the proposed rule provides a consistent basis for assessments among member firms and fairly assesses a charge to cover the costs incurred by the Association in the redesign of the CRD System.

*(B) Self-Regulatory Organization's State on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(D)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a due, fee or other charge. However, the NASD has determined to implement the rule change on August 1, 1995.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-95-32 and should be submitted by August 22, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-18818 Filed 7-31-95; 8:45 am]

BILLING CODE 8010-01-M

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**[Docket S-923]**

**Mormac Marine Transport, Inc.; Notice of Application for Modification of Operating-Differential Subsidy Agreement, Contract MA/MSB-295(c) and extension of subsidizable life of the MORMACSTAR and MORMACSUN**

By application dated July 10, 1995, pursuant to section 605(b) of the Merchant Marine Act, 1936, as amended (Act) Mormac Marine Transport, Inc. (Mormac) requests that the subsidized life of the MORMACSTAR and the MORMACSUN (Vessels) be extended to January 31, 1997. In addition, pursuant to Article II-25 of ODSA MA/MSB-295(c) Mormac requests that Article I-3(a) of ODSA MA/MSB-295(c) be modified to permit a subsidy sharing arrangement between the Vessels and the MORMACSKY.

Mormac notes that the ODSA applicable to the MORMACSKY (MA/MSB-295(c)) terminates on January 31, 1997. Without an extension of its subsidized life the MORMACSTAR would conclude its subsidized life on December 9, 1995 (MA/MSB-295(b)) and the MORMACSUN would conclude its subsidized life on June 22, 1996 (MA/MSB-295(c)).

Extending the subsidized life of the Vessels and establishing a subsidy sharing arrangement will, according to Mormac, permit the Vessels to remain active participants in the U.S. foreign trade for one additional year and six additional months, respectively, while concurrently helping to ensure the employment of U.S. seafarers for this additional time. Mormac also points out that the Vessels would remain available for use in times of national emergency during the extended subsidizable life.

Mormac contends that the Vessels are actively engaged in the international trade and well maintained. Neither is required to exit the trade as a single hull vessel until 2003. The public interest and the U.S. merchant marine, Mormac asserts, would be supported by the approval of its request.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassiff Building, 400 Seventh Street SW., Washington, D.C. 20590. Comments must be received no later than 5:00 p.m. on August 10, 1995. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

Dated: July 26, 1995.

By Order of the Maritime Subsidy Board.

**Joel C. Richard,**

*Secretary.*

[FR Doc. 95-18791 Filed 7-31-95; 8:45 am]

BILLING CODE 4910-81-P

<sup>1</sup> 15 U.S.C. § 78o-3.

**DEPARTMENT OF THE TREASURY**

**Public Information Collection Requirements Submitted to OMB for Review**

July 25, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545-1056.  
*Regulation ID Number:* INTL-61-86 Final.

*Type of Review:* Extension.  
*Title:* Foreign Tax Credit: Notice and Adjustment Due to Foreign Tax Redeterminations.

*Description:* Section 905(c) requires notification and redetermination of a taxpayer's United States tax liability to account for the effect of a foreign tax redetermination, in certain cases. The reporting requirements will enable the Internal Revenue Service to recompute a taxpayer's United States tax liability.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents:* 10,000.

*Estimated Burden Hours Per Respondent:* 1 hour.

*Frequency of Response:* On occasion.  
*Estimated Total Reporting Burden:* 8,750 hours.

*Clearance Officer:* Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*  
[FR Doc. 95-18844 Filed 7-31-95; 8:45 am]

BILLING CODE 4830-01-P

**Public Information Collection Requirements Submitted to OMB for Review**

July 25, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545-1013.  
*Form Number:* IRS Form 8612.  
*Type of Review:* Revision.  
*Title:* Return of Excise Tax on

Undistributed Income of Real Estate Investment Trusts.

*Description:* Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 20.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—6 hours, 13 minutes.  
Learning about the law or the form—1 hour, 35 minutes.  
Preparing and sending the form to the IRS—1 hour, 46 minutes.

*Frequency of Response:* Annually.  
*Estimated Total Reporting/Recordkeeping Burden:* 191 hours.

*Clearance Officer:* Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*  
[FR Doc. 95-18846 Filed 7-31-95; 8:45 am]

BILLING CODE 4830-01-P

**Public Information Collection Requirements Submitted to OMB for Review**

July 25, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545-0047.  
*Form Number:* IRS Form 990 and Schedule A (Form 990).

*Type of Review:* Extension.

*Title:* Return of Organization Exempt From Income Tax Under Section 501(c) of the Internal Revenue Code (except black lung benefit trust or private foundation) or section 4947(a)(1) nonexempt charitable trust (Form 990).

Organization Exempt Under Section 501(c)(3) (Except Private Foundation), 501(e), 501(f), 501(k), or Section 4947(a)(1) Nonexempt Charitable Trust, Supplementary Information (Schedule A (Form 990)).

*Description:* Form 990 is needed to determine that the Internal Revenue Code (IRC) section 501(a) tax-exempt organizations fulfill the operating conditions of their tax exemption. Schedule A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

*Respondents:* Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 327,953

*Estimated Burden Hours Per Respondent/Recordkeeper:*

	Form 990	Schedule A
Recordkeeping .....	92 hrs., 47 min. ....	49 hrs., 59 min.
Learning about the law or the form .....	17 hrs., 5 min. ....	9 hrs., 8 min.
Preparing the form .....	22 hrs., 9 min. ....	10 hrs., 22 min.
Copying, assembling, and sending the form to the IRS .....	48 min. ....	0

*Frequency of Response:* Annually.  
*Estimated Total Reporting/Recordkeeping Burden:* 52,372,061 hours.

*Clearance Officer:* Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

*OMB Reviewer:* Milo Sunderhauf (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan**

*Departmental Reports Management Officer.*  
[FR Doc. 95-18845 Filed 7-31-95; 8:45 am]  
BILLING CODE 4830-01-P

[Treasury Directive Number 15-13]

**Delegation of Authority to the Director, Bureau of Alcohol, Tobacco and Firearms, Under 31 U.S.C. 333, Misuse of Treasury Name or Symbol**

Dated: July 24, 1995.

1. *Purpose.* This Directive delegates to the Director, Bureau of Alcohol, Tobacco and Firearms ("ATF"), certain criminal investigatory authority and civil penalty enforcement authority under 31 U.S.C. 333 relating to misuse of the name or symbol of the Department of the Treasury or any Treasury component or employee thereof as specified below.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 333, and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101-05, there is hereby delegated to the Director, Bureau of Alcohol, Tobacco and Firearms, authority to investigate criminal violations of, and to assess civil penalties under, section 333 involving: (a) the misuse of the name or symbol of the Bureau of Alcohol, Tobacco and Firearms or the name of any ATF employee; or (b) the name or symbol of the Department of the Treasury or the Secretary or any Treasury employee in connection with activities within the jurisdiction of the Bureau of Alcohol, Tobacco and Firearms.

3. *Civil Penalty Authority.* The Director, Bureau of Alcohol, Tobacco and Firearms, will assess, mitigate and collect civil penalties in accordance with guidelines issued by the Office of the Under Secretary (Enforcement).

4. *Redelegation.* The authority delegated by this Directive may be redelegated.

5. *Authorities.*

a. TO 101-05, "Reporting Relationships and Supervision of

Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 31 U.S.C. 333.

6. *References.*

a. Treasury Directive (TD) 73-03, "Official Flags of the Department of the Treasury."

b. TD 73-04, "Official Seal of the Department of the Treasury."

c. 18 U.S.C. 701.

7. *Expiration Date.* This Directive shall expire three years from the date of issuance unless cancelled or superseded by that date.

8. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

**Ronald K. Noble,**

*Under Secretary (Enforcement).*

[FR Doc. 95-18841 Filed 7-31-95; 8:45 am]

BILLING CODE 4810-25-P

[Treasury Directive Number 15-31]

**Delegation of Authority to the Commissioner, United States Customs Service, Under 31 U.S.C. 333, Misuse of Treasury Name or Symbol**

Dated: July 24, 1995.

1. *Purpose.* This Directive delegates to the Commissioner, United States Customs Service, certain criminal investigatory authority and civil penalty enforcement authority under 31 U.S.C. 333 relating to misuse of the name or symbol of the Department of the Treasury or any Treasury component or employee thereof as specified below.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 333, and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101-05, there is hereby delegated to the Commissioner, United States Customs Service, authority to investigate criminal violations of, and to assess civil penalties under, section 333 involving: (a) The misuse of the name or symbol of the Customs Service or the name of any Customs employee; or (b) the name or symbol of the Department of the Treasury or the Secretary or any Treasury employee in connection with activities within the jurisdiction of the Customs Service.

3. *Civil Penalty Authority.* The Commissioner, United States Customs Service, will assess, mitigate and collect civil penalties in accordance with guidelines issued by the Office of the Under Secretary (Enforcement).

4. *Redelegation.* The authority delegated by this Directive may be redelegated.

5. *Authorities.*

a. TO 101-05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 31 U.S.C. 333.

6. *References.*

a. Treasury Directive (TD) 73-03, "Official Flags of the Department of the Treasury."

b. TD 73-04, "Official Seal of the Department of the Treasury."

c. 18 U.S.C. 701.

7. *Expiration Date.* This Directive shall expire three years from the date of issuance unless cancelled or superseded by that date.

8. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

**Ronald K. Noble,**

*Under Secretary (Enforcement).*

[FR Doc. 95-18842 Filed 7-31-95; 8:45 am]

BILLING CODE 4810-25-P

[Treasury Directive Number 15-43]

**Delegation of Authority to the Commissioner, Internal Revenue Service, Under 31 U.S.C. 333, Misuse of Treasury Name or Symbol**

Dated: July 24, 1995.

1. *Purpose.* This Directive delegates to the Commissioner, Internal Revenue Service, criminal investigatory authority and civil penalty enforcement authority under 31 U.S.C. 333 relating to misuse of the name or symbol of the Department of the Treasury or any Treasury component or employee thereof as specified below.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 333, and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101-05, there is hereby delegated to the Commissioner, Internal Revenue Service, authority to investigate criminal violations of, and to assess civil penalties under, section 333 involving: (a) The misuse of the name or symbol of the Internal Revenue Service or the name of any IRS employee; or (b) the name or symbol of the Department of the Treasury or the Secretary or any Treasury employee in connection with activities within the jurisdiction of the Internal Revenue Service.

3. *Civil Penalty Authority.* The Commissioner, Internal Revenue Service, will assess, mitigate and collect civil penalties in accordance with guidelines issued by the Office of the Under Secretary (Enforcement).

4. *Redelegation.* The authority delegated by this Directive may be redelegated.

5. *Authorities.*

a. TO 101-05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 31 U.S.C. 333.

6. *References.*

a. Treasury Directive (TD) 73-03, "Official Flags of the Department of the Treasury."

b. TD 73-04, "Official Seal of the Department of the Treasury."

c. 18 U.S.C. 701.

7. *Expiration Date.* This Directive shall expire three years from the date of issuance unless cancelled or superseded by that date.

8. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

**Ronald K. Noble,**

*Under Secretary (Enforcement).*

[FR Doc. 95-18843 Filed 7-31-95; 8:45 am]

BILLING CODE 4810-25-P

## Customs Service

[T.D. 95-57]

### Cancellation of Customs Broker Licenses

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Cancellation of licenses.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker licenses have been cancelled due to the death of the broker. These licenses were issued in the Houston-Galveston District.

James Costello—06974

Allan Frank LaBay—02640

Robert Wayne Manuel—05155

Walter Revere Zanes, Jr.—02855

Pamela J. McGruder—11011

Dated: July 25, 1995.

**Philip Metzger,**

*Director, Trade Compliance.*

[FR Doc. 95-18746 Filed 7-31-95; 8:45 am]

BILLING CODE 4820-02-P

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June

27, 1985 (50 FR 27293, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Art, Politics and Change: Jewish Artists in Russia, 1890-1990" (See list),<sup>1</sup> imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The Jewish Museum, New York, New York from on or about September 24, 1995, to on or about January 28, 1996, and at one or more subsequent U.S. locations yet to be determined, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: July 26, 1995.

**Les Jin,**

*General Counsel.*

[FR Doc. 95-18759 Filed 7-31-95; 8:45 am]

BILLING CODE 8230-01-M

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "PARIS MODERN: The Swedish Ballet 1920-1925" (See list<sup>1</sup>), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determined that the exhibition or display of the listed exhibit objects at The Museum at the Fashion Institute, New York, New York from on or about October 9, 1995, through January 15, 1996; The McNay Art Museum, San Antonio, Texas from on or about February 12, 1996 through May 12, 1996; and The Fine Arts Museums of San Francisco, San Francisco, California

<sup>1</sup> A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202 619-5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547.

<sup>1</sup> A copy of this list may be obtained by contacting Mrs. Carol B. Epstein, Assistant General Counsel, at 202/619-6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547-0001

from on or about June 15, 1996 through September 8, 1996, is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: July 26, 1995.

**Les Jin,**

*General Counsel.*

[FR Doc. 95-18758 Filed 7-31-95; 8:45 am]

BILLING CODE 8230-01-M

## DEPARTMENT OF VETERANS AFFAIRS

### Request for Public Comments on Proposed Information Collections

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*OMB Control Number:* 2900-0031.

*Title and Form Number:* Veterans Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26-4555c.

*Type of Information Collection:* Revision of a currently approved collection.

*Need and Uses:* The form is used by veterans to apply for specially adapted housing grants. The information is used by VBA to determine if it is economically feasible for a veteran to reside in specially adapted housing and also to compute the proper grant amount.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 115 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 460.

*OMB Control Number:* 2900-0463.

*Title and Form Number:* Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowance, VA Form 21-8951.

*Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Need and Uses:* The form is to be used by a VA beneficiary who is also a reservist or guardsman to report the number of days he or she is in training

and to waive VA disability benefits for an equal number of days. The information will be used by VBA to adjust VA benefits, thus preventing an overpayment.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 700 hours.

*Estimated Average Burden Per Respondent:* 2 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 21,000.

**ADDRESSES:** Requests for copies of the forms, the request for clearance, and supporting documentation or comments and recommendations concerning the proposals should be directed to Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273-6886.

**DATES:** Comments and recommendations on the proposals for the collection of information should be received on or before October 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ron Taylor, VA Clearance Officer (045A4), (202) 565-4412.

Dated: July 25, 1995.

By direction of the Secretary.

**William T. Morgan,**

*Management Analyst Officer.*

[FR Doc. 95-18767 Filed 7-31-95; 8:45 am]

BILLING CODE 8320-01-M

### Requests for Public Comments on Proposed Collections of Information

**AGENCY:** Office of Information Resources Management, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Office of Information Resources Management (IRM), Department of Veterans Affairs, will submit to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*OMB Control Number:* 2900-0028

*Title and Form Number:* Application for Service Representatives for Placement on Mailing List, VA Form 3215

*Type of Information Collection:*

Extension of a currently approved collection

*Need and Uses:* The form is used by service organizations for placing their representatives on the mailing list to receive VA publications. The information is used by VA regional

offices for forwarding publications to the service organizations to be used in rendering services and representation to veterans, their spouses and dependents

*Affected Public:* Individuals or households

*Estimated Annual Burden:* 150 hours

*Estimated Average Burden Per*

*Respondent:* 10 minutes

*Frequency of Response:* On occasion

*Estimated Number of Respondents:* 150

**ADDRESSES:** Requests for a copy of the form, the request for clearance, and supporting documentation or comments and recommendations concerning the proposal should be directed to Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565-4412.

**DATES:** Comments and recommendations on the proposals for the collection of information should be received by October 2, 1995.

Dated: July 25, 1995.

By direction of the Secretary.

**William T. Morgan,**

*Management Analyst Officer.*

[FR Doc. 95-18768 Filed 7-31-95; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 60, No. 147

Tuesday, August 1, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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## FEDERAL COMMUNICATIONS COMMISSION

### FCC To Hold Open Commission Meeting Thursday, August 3, 1995

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 3, 1995, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

#### Item No., Bureau, and Subject

- 1—Common Carrier—Title: Final Report of the Hearing Aid-Compatibility Negotiated Rulemaking Committee (CC Docket No. 87-124). Summary: The Commission will be presented with a staff report on the recommendations of the Hearing Aid-Compatibility Negotiated Rulemaking Committee.
- 2—Common Carrier—Title: Report on Consumer Protection and Enforcement Issues. Summary: The Commission will be presented with a staff report on Common Carrier-related consumer protection and enforcement issues.
- 3—International—Title: Progress Statement on International Dial-a-porn Crackdown. Summary: The Commission will be presented with a staff report on the crackdown on international dial-a-porn.

Additional information concerning this meeting may be obtained from Audrey Spivack or Maureem Peratino, Office of Public Affairs, telephone number (202) 418-0500.

Dated: July 27, 1995.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95-18951 Filed 7-28-95; 2:27 pm]

BILLING CODE 6712-01-F

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## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 11 a.m., Monday, August 7, 1995.

**PLACE:** William McChesney Martin, Jr. Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 28, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95-19051 Filed 7-28-95; 3:52 pm]

BILLING CODE 6210-01-P

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## NUCLEAR REGULATORY COMMISSION

**DATE:** Week of July 31, August 7, 14, and 21, 1995.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public.

### MATTERS TO BE CONSIDERED:

#### Week of July 31

There are no meetings scheduled for the Week of July 31.

#### Week of August 7—Tentative

There are no meetings scheduled for the Week of August 7.

#### Week of August 14—Tentative

There are no meetings scheduled for the Week of August 14.

#### Week of August 21—Tentative

*Tuesday, August 22*  
10:00 a.m.

Briefing on Changes to the Performance Indicator Program (Public Meeting)  
(Contact: Steve Mays, 301-415-7496)  
11:30 a.m.

#### Affirmation Session (Public Meeting)

(Please Note: This item will be affirmed immediately following the conclusion of the preceding meeting.)

- a. Final Amendment to 10 CFR Part 50, Appendix J, "Containment Leakage Testing," to Adopt Performance-Oriented and Risk-Based Approaches (Tentative)  
(Contact: Andrew Bates, 301-415-1963)

**Note:** The Nuclear Regulatory Commission is operating under a delegation of authority to Chairman Shirley A. Jackson, because with three vacancies on the Commission, it is temporarily without a quorum. As a legal matter, therefore, the Sunshine Act does not apply; but in the interests of openness and public accountability, the Commission will conduct business as though the Sunshine Act were applicable.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415-1292.

### CONTACT PERSON FOR MORE INFORMATION:

Bill Hill (301) 415-1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1963).

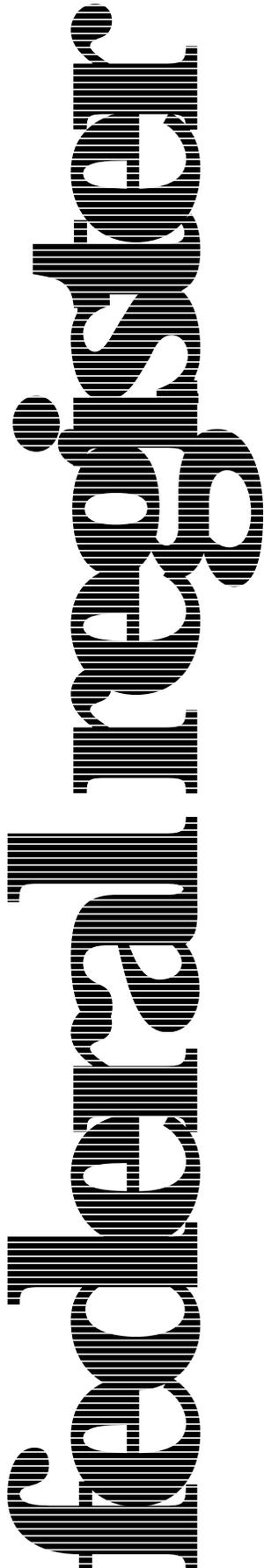
In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or gkt@nrc.gov.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 95-18922 Filed 7-28-95; 10:25 am]

BILLING CODE 7590-01-M



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Tuesday  
August 1, 1995

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**Part II**

**Department of Labor**

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**Pension and Welfare Benefits  
Administration**

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**29 CFR Part 2510  
Plans Established or Maintained Pursuant  
to Collective Bargaining Agreements;  
Proposed Rule**

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****29 CFR Part 2510**

RIN 1210-AA48

**Proposed Regulation for Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40) (A)**

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document contains a proposed regulation under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001-1461 (ERISA or the Act), setting forth specific criteria that must be met in order for the Secretary of Labor (the Secretary) to find that an agreement is a collective bargaining agreement for purposes of this section. The proposed regulation also sets forth criteria for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that meet the requirements of the proposed regulation are excluded from the definition of "multiple employer welfare arrangements" under section 3(40) of ERISA and consequently are not subject to state regulation of multiple employer welfare arrangements as provided for by the Act. If adopted, the proposed regulation would affect employee welfare benefit plans, their sponsors, participants, and beneficiaries as well as service providers to plans.

**DATES:** Written comments concerning this proposed rule must be received by October 2, 1995.

**ADDRESSES:** Interested persons are invited to submit written comments (preferably three copies) concerning the proposals herein to: Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210. Attention: Proposed Regulation Under Section 3(40). All submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Ave., N.W., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mark Connor, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Rm N-5669, 200 Constitution Ave., N.W., Washington,

DC 20210 (telephone (202) 219-8671) or Cynthia Caldwell Weglicki, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Rm N-4611, 200 Constitution Ave., N.W., Washington, DC 20210 (telephone (202) 219-4592). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:****A. Background**

Notice is hereby given of a proposed regulation under section 3(40) of ERISA, 29 U.S.C. 1002(40). Section 3(40)(A) defines the term multiple employer welfare arrangement (MEWA) in pertinent part as follows:

The term "multiple employer welfare arrangement" means an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing any benefit described in paragraph (1) [of section 3 of the Act] to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained—

(i) under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements \* \* \*.

This provision was added to ERISA by the Multiple Employer Welfare Arrangement Act of 1983, Sec. 302(b), Pub. L. 97-473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)), which also amended section 514(b) of ERISA. Section 514(a) of the Act provides that state laws which relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of state regulation depending on whether or not the MEWA is fully insured. Sec. 302(b), Pub. L. 97-473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).<sup>1</sup>

<sup>1</sup> The Multiple Employer Welfare Arrangement Act of 1983 added section 514(b)(6) which provides a limited exception to ERISA's preemption of state insurance laws that allows states to exercise regulatory authority over employee welfare benefit plans that are MEWAs. Section 514(b) provides, in relevant part, that:

(6)(A) Notwithstanding any other provision of this section—(i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

(I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and

The Multiple Employer Welfare Arrangement Act legislation was introduced to counter what the Congressional drafters termed abuse by the "operators of bogus 'insurance' trusts." 128 Cong. Rec. E2407 (1982) (Statement of Congressman Erlenborn). In his comments, Congressman Erlenborn noted that certain MEWA operators had been successful in thwarting timely investigations and enforcement activities of state agencies by asserting that such entities were ERISA plans exempt from state regulation by the terms of section 514 of ERISA. The goal of the bill, according to Congressman Erlenborn, was to remove "any potential obstacle that might exist under current law which could hinder the ability of the States to regulate multiple employer welfare arrangements to assure the financial soundness and timely payment of benefits under such arrangements." *Id.* This concern was also expressed by the Committee on Education and Labor in the Activity Report of the Pension Task Force (94th Congress, 2d Session, 1977) cited by Congressman Erlenborn:

It has come to our attention, through the good offices of the National Association of State Insurance Commissioners, that certain entrepreneurs have undertaken to market insurance products to employers and employees at large, claiming these products to be ERISA covered plans. For instance, persons whose primary interest is in the profiting from the provision of administrative services are establishing insurance companies and related enterprises. The entrepreneur will then argue that his enterprise is an ERISA benefit plan which is protected under ERISA's preemption provision from state regulation.

*Id.* As a result of the addition of section 514(b)(6), certain state laws regulating insurance apply to employee benefit plans that are MEWAs. However, the definition of a MEWA in section 3(40) provides that an employee benefit plan is not a MEWA if it is established or maintained pursuant to an agreement which the Secretary finds to be a collective bargaining agreement. Such a plan is therefore not subject to state insurance law regulation under section 514(b)(6). This exclusion is necessary to avoid disrupting the activities of legitimate Taft-Hartley plans.

(II) provisions to enforce such standards, and (ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this title, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this title.

Thus an employee welfare benefit plan that is a MEWA remains subject to state regulation to the extent provided in section 514(b)(6)(A). MEWAs which are not employee benefit plans are unconditionally subject to state law.

While the Multiple Employer Welfare Arrangement Act of 1983 significantly enhanced the states' ability to regulate MEWAs, problems in this area continue to exist as the result of the exception for collectively bargained plans contained in the 1983 amendments. This exception is now being exploited by some MEWA operators who, through the use of sham unions and collective bargaining agreements, market fraudulent insurance schemes under the guise of collectively bargained welfare plans exempt from state insurance regulation.<sup>2</sup> Another problem in this area involves the use of collectively bargained arrangements as vehicles for marketing health care coverage nationwide to employees and employers with no relationship to the bargaining process or the underlying agreement.

The Department believes that regulatory guidance in this area is necessary to ensure that (1) state insurance regulators have ascertainable guidelines to help identify and regulate MEWAs operating in their jurisdiction and (2) sponsors of employee health benefit programs will be able to determine independently whether their plans are established or maintained pursuant to collective bargaining agreements for purposes of section 3(40)(A) without imposing the additional burden of having to apply to the Secretary for an individual finding.<sup>3</sup>

The proposed regulation first establishes specific criteria that the Secretary finds must be present in order for an agreement to be a collection bargaining agreement for purposes of section 3(40) and, second, establishes certain criteria applicable to determining when an employee benefit plan or other arrangement is established or maintained under or pursuant to such an agreement for purposes of section 3(40). In this regard, the Department notes that section 3(40) not only requires the existence of a *bona fide* collective bargaining agreement, but

<sup>2</sup> In addition, the Department has received requests to make individual determinations concerning the status of particular plans under section 3(40). See, e.g., *Ocean Breeze Festival Park v. Reich*, 853 F. Supp. 906, 910 (1994) (denying motion for mandamus and granting leave to amend complaint), *summary judgement granted sub nom. Virginia Beach Policemen's Benevolent Association, et al. v. Reich*, 881 F. Supp. 1059 (E.D.Va. 1995); *Amalgamated Local Union No. 355 v. Gallagher*, No. 91 CIV 0193(RR) (E.D.N.Y. April 15, 1991).

<sup>3</sup> It is the Department's position that the language of section 3(40) of ERISA does not require the Secretary to make individual findings that specific agreements are collective bargaining agreements. Moreover, a district court recently found that the Secretary has no "statutory responsibility" to make individualized findings. *Virginia Beach Policeman's Benevolent Association v. Reich*, 881 F. Supp. 1059, 1069-70 (E.D.Va. 1995).

also requires that the plan be "established or maintained" pursuant to such an agreement. The Department believes that, in establishing the exception under section 3(40)(A)(i) of the Act, Congress intended to accommodate only those plans established or maintained to provide benefits to bargaining unit employees on whose behalf the plans were collectively bargained. For this reason, the Department believes that the exception under section 3(40)(A)(i) should be limited to plans providing coverage primarily to those individuals covered under collective bargaining agreements. Accordingly, the criteria in the proposed regulation relating to whether a plan or other arrangement qualifies as "established or maintained" is intended to ensure that the statutory exception is only available to plans whose participant base is predominately comprised of the bargaining unit employees on whose behalf such benefits were negotiated.

The proposed regulation would, upon adoption, constitute the Secretary's finding for purposes of determining whether an agreement is a collective bargaining agreement pursuant to section 3(40) of the Act. The Department does not intend to make individual findings or determinations concerning an entity's compliance with the proposed regulation. The criteria contained in the proposed regulation are designed to enable entities and state insurance regulatory agencies to determine whether the requirements of the statute are met. Under the proposed regulation, entities seeking to comply with these criteria must, upon request, provide documentation of their compliance with the criteria to the state or state agency charged with investigating and enforcing state insurance laws.

## B. Description of the Proposal

Proposed § 2510.3-40(a) follows the language of section 3(40)(A) of the Act and states that the term multiple employer welfare arrangement does not include an employee welfare benefit plan which is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements. Proposed § 2510.3-40(b) provides criteria which the Secretary finds to be essential for an agreement to be collectively bargained for purposes of section 3(40)(A) of the Act. Proposed § 2510.3-40(c) sets forth requirements concerning individuals covered by the employee welfare benefit plan that must be satisfied in order for an employee welfare benefit plan to be considered

established or maintained under or pursuant to a collective bargaining agreement as defined in § 2510.3-40(b). Proposed § 2510.3-40(d) provides definitions of the terms "employee labor organization" and "supervisors and managers" for purposes of this section. Proposed § 2510.3-40(e) explains that a plan does not satisfy the requirements of this section if the plan or any entity associated with the plan (such as the employee labor organization or the employer) fails or refuses to comply with the requests of a state or state agency with respect to any documents or other evidence in its possession or control that are necessary to make a determination concerning the extent to which the plan is subject to state insurance law. Proposed § 2510.3-40(f) provides that, in a proceeding brought by a state or state agency to enforce the insurance laws of the state, nothing in the proposed regulation shall be construed to prohibit allocation of the burden of proving the existence of all the criteria required by this section to the entity seeking to be treated as other than a MEWA.

Under the proposed regulation, a plan that fails to meet the applicable criteria would be a MEWA and thus subject to state insurance laws as provided in section 514(b)(6) of ERISA.

Each subsection of the proposed regulation is described in detail below.

### 1. General Rule and Scope

Proposed regulation 29 CFR 2510.3-40 establishes criteria which must be met for a plan to be established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements for purposes of section 3(40) of the Act. The proposed regulation is not intended to apply to or affect any other provision of federal law.<sup>4</sup>

In the Department's view, the exclusion of collectively bargained plans or other arrangements from the definition of a MEWA in section 3(40)(A) is an exception to the general statutory rule. Thus the entity asserting the applicability of the provisions concerning collectively bargained plans

<sup>4</sup> The Department notes that section 3(40) of ERISA is not the only provision that provides special rules to be applied to agreements that the Secretary finds to be collectively bargained. For example, sections 404(a)(1) (B) and (C) of the Internal Revenue Code (Code) provide special rules to determine the maximum amount of deductible contributions in the case of amendments to plans that the Secretary of Labor finds to be collectively bargained. In addition, Code sections 410(b)(3) and 413(a) exclude from minimum coverage requirements certain employees covered by an agreement that the Secretary finds to be a collective bargaining agreement.

in section 3(40) has the burden of providing evidence of compliance with the conditions of the statutory exception and the criteria set forth in the proposed regulation.<sup>5</sup> Accordingly, if an entity's status as established or maintained pursuant to one or more agreements which satisfy the criteria of the proposed regulation is challenged by a state or state agency, the entity seeking to be treated as other than a MEWA must produce sufficient evidence to establish that all of the requirements of the proposed regulation have been met.<sup>6</sup>

## 2. Definition of a Collective Bargaining Agreement

Proposed § 2510.3-40(b) establishes criteria that an agreement must meet in order to be a collective bargaining agreement for purposes of this section. An agreement constitutes a collective bargaining agreement only if the agreement is in writing and is executed by or on behalf of an employer of employees described in § 2510.3-40(c)(1) and by representatives of an employee labor organization meeting the requirements of § 2510.3-40(d)(1). In addition, the agreement must also be the result of good faith, arms-length bargaining binding signatory employers and the employee labor organization to the terms of the agreement for a specified project or period of time, and the agreement must be one which cannot be unilaterally amended or terminated. The Department notes that agreements in which an employer adopts all provisions of an existing agreement binding an employer and an employee labor organization to the terms and conditions of a collective bargaining agreement, such as a pattern agreement, will not fail to satisfy the requirements of proposed § 2510.3-40(b) if the original agreement as initially adopted satisfied the requirements of this section. The Department has also determined that collective bargaining agreements containing an agreement not to strike

and providing that the collective bargaining agreement will terminate upon the initiation of a strike, often called "no strike" provisions, will not fail to satisfy the proposed regulation solely by reason of such provisions.

Proposed § 2510.3-40(b)(6) requires that a collective bargaining agreement may not provide for termination of the agreement solely as a result of the failure to make contributions to the plan. Proposed § 2510.3-40(b)(7) provides that an agreement will not constitute a collective bargaining agreement under this section if, in addition to the provision of health coverage, the agreement encompasses only the minimum requirements mandated by law with respect to the terms and conditions of employment (e.g., minimum wage and workers' compensation). The phrase "terms and conditions of employment" as used in the proposed regulation is intended to have the same meaning and application as in case law decided under the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* (NLRA), and would include wages, hours of work and other matters of employment such as grievance procedures and seniority rights. For purposes of this section, the expiration of a collective bargaining agreement will not in and of itself prevent the agreement from satisfying the requirements under the proposed regulation if the agreement, although expired, continues in force.

## 3. Plans Established or Maintained

The proposed regulation also establishes certain criteria to determine when a plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40). Proposed § 2510.3-40(c) provides that in situations where a plan covers both individuals who are members of a group or bargaining unit represented by an employee labor organization as defined in proposed § 2510.3-40(d)(1) as well as other individuals, the plan will not be considered to be established or maintained pursuant to one or more collective bargaining agreements unless no less than 85% of the individuals covered by the plan are present or certain former employees and their beneficiaries, excluding supervisors and managers as defined in paragraph (d)(2), who are currently or who were previously covered by a collective bargaining agreement.<sup>7</sup> In addition,

three groups of individuals may participate in the plan but are not counted in determining the total number of individuals covered by the plan for purposes of calculating the 85% limitation: (1) Present or former employees of the plan or of a related plan established or maintained pursuant to the same collective bargaining agreement; (2) present or former employees of the employee labor organization as defined in paragraph (d)(1) that is a signatory to the collective bargaining agreement pursuant to which the plan is maintained, and (3) beneficiaries of individuals in groups (1) and (2).

For purposes of the proposed regulation, the term "former employee" is limited to individuals who are receiving workers' compensation or disability benefits, continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) (Part 6 of title I of ERISA, 29 U.S.C. §§ 1161-1168), or who have retired or separated from employment after working for more than 1000 hours a year for at least three years for a signatory employer or employee organization, or the plan or related plan. For purposes of paragraph (c)(4), to be considered an employee of the plan, a related plan, or the signatory employee labor organization, an individual must work a least (A) 15 hours a week or 60 hours a month during the period of coverage under the plan, or (B) have worked at least 1000 hours in the last year and currently be on *bona fide* leave based on sickness or disability of the individual or the individual's family or on earned vacation time.

The proposed regulation requires that the plan satisfy the 85% limitation on the last day of each of the previous five calendar quarters unless the plan has not been in existence for five calendar quarters. If the plan or other arrangement has been in existence for a shorter period of time, it must satisfy the 85% limitation on the last day of each calendar quarter during which it has been in existence.

Through the requirement that no less than 85% of individuals covered by the plan be present or former bargaining

requirements of section 3(1) of ERISA in order to be an employee welfare benefit plan covered by the Act. Section 3(1) provides that status as an ERISA covered plan is dependent on the composition and attributes of the participant base as well as the characteristics of the employer and employee organization. *See, e.g., Bell v. Employee Security Benefits Association*, 437 F. Supp. 382 (1977); Advisory Opinion 93-32 (letter to Mr. Kevin Long, December 16, 1993); Advisory Opinion 85-03A (letter to Mr. James Ray, January 15, 1985); Advisory Opinion 77-59 (letter to Mr. William Hager, August 26, 1977).

<sup>5</sup> 2A Sutherland Statutory Construction § 47.11 (Norman J. Singer ed. 5th ed. 1992); *United States v. First City National Bank of Houston*, 386 U.S. 361, 366 (1967) (burden of establishing applicability of statutory exception is on entity that asserts it); *Federal Trade Commission v. Morton Salt Co.*, 334 U.S. 37, 44-45 (1948) ("First, the general rule of statutory construction [is] that the burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on one who claims its benefits \* \* \*.")

<sup>6</sup> *See Donovan v. Cunningham*, 716 F. 2d 1455, 1467-68 n.27 (5th Cir. 1983) (citing *Securities and Exchange Commission v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953)). "As the Supreme Court has observed in a different context, it seems 'fair and reasonable' to place the burden of proof upon a party who seeks to bring his conduct within a statutory exception to a broad remedial scheme.")

<sup>7</sup> Although the proposed regulation itself does not impose any specific restrictions concerning individuals who may be included in the 15%, the entity as a whole must comply with the

unit members, the proposed regulation intends to treat as MEWAs arrangements that permit individuals to participate in an employee welfare benefit plan solely as a result of membership or affiliation with an entity and not as a result of the individuals being legitimately represented in collective bargaining by a *bona fide* employee labor organization.<sup>8</sup> The Department believes that the 85% limitation in the proposed regulation is consistent with the purpose of the statutory exception in section 3(40)(A)(i) of ERISA for employee welfare benefit plans which are established or maintained as the result of collective bargaining on behalf of employees concerning the terms and conditions of their employment. To the extent that the Department's position as indicated in Advisory Opinion 9106A (January 15, 1991) to Gerald Grimes, Oklahoma Insurance Commissioner (concerning a trust that provided health care and other benefits to "associate members" of a labor organization who were not represented by the organization in collective bargaining), appears to express a different position, it would be superseded by the adoption of a final regulation that incorporates this requirement.

#### 4. Definition of Employee Labor Organization

Proposed § 2510.3-40(d)(1) defines the term "employee labor organization" for purposes of this section. Proposed § 2510.3-40(d)(1)(i) provides that, with respect to a particular collective bargaining agreement, an employee labor organization must represent the employees of each signatory employer in one of two ways. All of a signatory employer's bargaining units covered by the collective bargaining agreement must either be certified by the National Labor Relations Board, or the employee labor organization must be lawfully recognized by the signatory employer as the exclusive representative for the employer's bargaining unit employees covered by the collective bargaining agreement. Such representation must take place without employer interference or domination. For purposes of the proposed regulation, employer interference or domination in the formation, administration, or operation of the employee labor

organization includes taking an active part in organizing an employee organization or committee to represent employees; bringing pressure upon employees to join an employee organization; improperly favoring one of two or more employee organizations that are competing to represent employees; or otherwise unlawfully promoting or assisting in the formation or operation of the employee organization.

Under proposed § 2510.3-40(d)(1)(ii), an employee labor organization must operate for a substantial purpose other than that of offering or providing health coverage. Proposed § 2510.3-40(d)(1)(iii) states that an employee labor organization may not pay commissions, fees, or bonuses to individuals other than full-time employees of the employee labor organization in connection with the solicitation of employers or participants with regard to a collectively bargained plan. In addition, under subsection (d)(1)(iv), the term "employee labor organization" does not include an organization that utilizes the services of licensed insurance agents or brokers for soliciting employers or participants in connection with a collectively bargained plan. Proposed § 2510.3-40(d)(1)(v) requires an employee labor organization to be a "labor organization" as defined in section 3(i) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 402(i). Proposed § 2510.3-40(d)(1)(vi) also requires an employee labor organization to qualify as a tax-exempt labor organization under section 501(c)(5) of the Internal Revenue Code of 1986. It is the view of the Department that these criteria are necessary to distinguish organizations that provide benefits through legitimate employee representation from organizations that are primarily in the business of marketing commercial insurance products.

#### 5. Supervisors and Managers

Proposed § 2510.3-40(d)(2) defines the terms "supervisors and managers" for purposes of this section. Proposed § 2510.3-40(d)(2) defines as "supervisors and managers" those employees of a signatory employer to a collective bargaining agreement who, acting on behalf of the employer, have the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or who have responsibility to direct other employees or to adjust their grievances, or who have power to make effective recommendations concerning any of the actions described above. In order to be considered a

supervisor or manager, an individual must be able to use independent judgment in the exercise of authority, responsibility, and power, and that exercise must be more than a routine or clerical function.

#### 6. Failure To Provide Documents

The proposed regulation provides that even if a plan meets the requirements of subsections 2510.3-40 (b) and (c) of this section, it will not be considered to be established or maintained pursuant to an agreement that the Secretary finds to be a collective bargaining agreement if an entity, plan, employee labor organization or employer which is a party to the agreement fails or refuses to provide documents or evidence in its possession or control to a state or state agency which reasonably requests documents or evidence in order to determine the status of any entity either under the proposed regulation or under state insurance laws. While the proposed regulation enumerates criteria designed to enable entities to determine whether the requirements of the statute are met, the Department intends that, when requested to do so, entities will provide documentation of their compliance with the criteria to the state or state agency charged with investigating and enforcing state insurance laws. An entity seeking to be treated as other than a MEWA under the provisions of the proposed regulation has the burden of producing sufficient documents and other evidence to prove that it meets the criteria of the proposed regulation and is therefore entitled to application of the statutory exemption from the definition of a MEWA.

The Department anticipates that states or state agencies, including any commission, board or committee charged with investigating and enforcing state insurance laws, will utilize existing jurisdiction under state laws to require the production of documents and other evidence. Where the entity's compliance with the criteria of the proposed regulation is disputed by a state or state agency, the Department expects that the state or state agency will use its existing authority under state law to bring the matter before the appropriate state adjudicatory body to determine the facts. The proposed regulation does not restrict the authority of the state or state agency to reinvestigate the entity at any time if it believes the entity is not in compliance with the proposed regulation or with state laws.

#### 7. Allocation of Burden of Proof

The proposed regulation provides that, in a proceeding brought by a state

<sup>8</sup>A number of instances have been brought to the Department's attention where entities have attempted to utilize purported collective bargaining agreements as a basis for marketing insurance coverage, generally under the guise of "associate membership," to non-bargaining unit individuals and unrelated employers. See, e.g., *Empire Blue Cross and Blue Shield v. Consolidated Welfare*, 830 F. Supp. 170 (E.D.N.Y. 1993).

or a state agency to enforce the insurance laws of the state, nothing in the proposed regulation shall be read or construed to prohibit the allocation of the burden of proving the existence of all criteria required by this section to the entity seeking to be treated as other than a MEWA. The proposed regulation enumerates criteria designed to enable entities to determine whether the requirements of the statute are met. However, as discussed in paragraph 1. General Rule and Scope, *supra*, the Department believes that when challenged, the entity asserting the applicability of an exception has the burden of providing evidence of compliance with each of the terms of the proposed regulation.

### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. The Pension and Welfare Benefits Administration has determined that, if adopted, this proposed rule may have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 603 of the Regulatory Flexibility Act (5 U.S.C. § 601, *et seq.*), the following initial regulatory flexibility analysis is provided:

(1) PWBA is considering the proposed regulation because it believes that regulatory guidance in this area is necessary to ensure (a) that state insurance regulators have ascertainable guidelines to help identify and regulate MEWAs operating in their jurisdictions, and (b) that sponsors of employee welfare benefit plans will be able to determine independently whether their plans are expected plans under section 3(40)(A) of ERISA. A more detailed discussion of the agency's reasoning for issuing the proposed regulation is found in the Background section, above.

(2) The objective of the proposed regulation is to provide guidance on the application of an exception to the definition of the term "multiple employer welfare arrangement" (MEWA) which is found in section 3(40) of ERISA and applies to certain employee welfare benefit plans. The legal basis for the proposed regulation is found at ERISA section 3(40) (23 U.S.C. 1002(40)); an extensive list of authority may be found in the Statutory Authority section, below.

(3) No accurate estimate of the number of small entities affected by the

proposed regulation is available. No small governmental jurisdictions will be affected. It is estimated that a substantial number of small businesses and organizations will be affected, due to the fact that it is precisely those entities, seeking group health care coverage, that are most harmed by unscrupulous entrepreneurs who purport to provide employee health benefits. In a report entitled "Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements," the United States General Accounting Office (GAO) calculated that between January 1988 and June 1991, fraudulent MEWAs left at least 398,000 participants and their beneficiaries with \$123 million in unpaid medical claims and left many other participants without the health insurance they had paid for.<sup>9</sup> By restricting fraudulent and financially unsound MEWAs, the proposed regulation may limit the sources of health care coverage offered to small businesses. On the other hand, MEWAs that either meet the section 3(40) criteria or meet state regulatory standards are less likely to demonstrate the type of fraudulent or imprudent activity that prompted Congressional action. The GAO Report indicated that, during the January 1988 and June 1991 period, more than 600 MEWAs failed to comply with state insurance laws and some violated criminal statutes.<sup>10</sup> Consequently, small entities will receive a benefit from the reduced incidence of fraud and insolvency among the pool of MEWAs in the marketplace. To the extent that MEWAs themselves are small entities, they too will be affected by the proposed regulation.

(4) No identical reporting or recordkeeping is required under the proposed rule. However, this regulation clarifies the information that must be provided upon request to state authorities by those MEWAs wishing to take advantage of the exception under section 3(40)(A) of ERISA. The information to be provided will vary depending upon the entity involved but will include a written collective bargaining agreement and records on the individual covered by the plan for at least the last five calendar quarters. Such information is routinely prepared and held in the ordinary course of business under current law by most small entities. It is anticipated that the preparation of some of these documents would require the professional skills of an attorney, accountant, or other health benefit plan professional; however, the

majority of the recordkeeping may be handled by clerical staff.

(5) No federal rules have been identified that duplicate overlap or conflict with the proposed rule.

(6) No significant alternatives which would minimize the impact on small entities have been identified. The proposed regulation is less costly in comparison with the alternative methods of determining compliance with section 3(40), such as case-by-case analysis by PWBA of each employee welfare benefit plan, or litigation. The costs of such alternatives would be unduly burdensome on small entities. No federal reporting is required. Instead, the proposed regulation would create standards by which the MEWAs may be reviewed by the states. It would be inappropriate to create an alternative with lower compliance criteria, or an exemption under the proposed regulation, for small MEWAs because those are the entities which pose a higher degree of risk of non-performance due to their increased likelihood of being under-funded or otherwise having inadequate reserves to meet the benefits claims submitted for payment.

### Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Department must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, the Department has determined that this program creates a improved method for statutory compliance that will reduce paperwork and regulatory compliance burdens on state

<sup>9</sup> GAO/HRD-92-40 (March 1992) at 2.

<sup>10</sup> *Id.*

governments, businesses, including small businesses and organizations, and make better use of scarce federal resources, in accord with the mandates of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the President's priorities. The Department believes this notice is "significant" under category (4), *supra*, and subject to OMB review on that basis.

### Paperwork Reduction Act

The proposed regulation does not contain any information collection or recordkeeping requirements as those terms are defined under the Paperwork Reduction Act because the information to be provided on request to state authorities will vary in each instance depending on the entity involved. Consequently, there is no requirement that the entities comply with identical reporting or recordkeeping requirements. 5 CFR 1320.7(c). Thus, the proposed regulation imposes no additional federal paperwork burden and the Paperwork Reduction Act does not apply.

### Statutory Authority

This regulation is proposed pursuant to section 3(40) of ERISA (Pub. L. 97-473, 96 Stat. 2611, 2612, 29 U.S.C. 1002(40)) and section 505 (Pub. L. 93-406, 88 Stat. 892, 894, 29 U.S.C. 1135) of ERISA and under Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

### List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pension and Welfare Benefit Administration.

### Proposed Regulation

For the reasons set out in the preamble, the Department proposes to amend Part 2510 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

### PART 2510—[AMENDED]

1. The authority for Part 2510 is revised to read:

**Authority:** Secs. 3(2), 111(c), 505, Pub. L. 93-406, 88 Stat. 852, 894 (29 U.S.C. 1002(2), 1031, 1135); Secretary of Labor's Order No. 27-74, 1-86 (51 FR 3521, January 28, 1986), 1-87 (52 FR 13139, April 21, 1987), and Labor Management Services Administration Order No. 2-6.

Section 2510.3-40 is also issued under sec. 3(40), Pub. L. 97-473, 96 Stat. 2611, 2612 (29 U.S.C. 1002(40)).

Section 2510.3-101 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR 1978 Comp., p. 332, effective under E.O. 12108, 44 FR 1065, 3

CFR 1978 Comp. p. 275 and sec. 11018(d) of Pub. L. 99-272, 100 Stat. 82.

Section 2510.3-102 is also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR 1978 Comp., p. 332, effective under E.O. 12108, 44 FR 1065, 3 CFR comp., p. 275.

2. Part 2510 is amended by adding new § 2510.3-40 to read:

#### § 2510.3-40 Plans established or maintained pursuant to one or more collective bargaining agreements.

(a) *General.* Section 3(40)(A) of the Employee Retirement Income Security Act of 1974 (the Act) provides that the term "multiple employer welfare arrangement" (MEWA) does not include an employee welfare benefit plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary of Labor (the Secretary) finds to be a collective bargaining agreement(s). The purposes of the proposed regulation are to establish specific criteria that the Secretary finds must be met for an agreement to be a collective bargaining agreement and to establish criteria for determining when an employee benefit plan is established or maintained pursuant to such an agreement.

(b) *Collective Bargaining Agreement.* The Secretary finds, for purposes of section 3(40)(A) of the Act, that an agreement constitutes a collective bargaining agreement only if the agreement—

- (1) is in writing;
- (2) is executed by, or on behalf of, an employer of employees represented by an employee labor organization;
- (3) is executed by an employee labor organization;
- (4) is the product of good faith, arms-length bargaining between one or more employers and an employee labor organization or uniformly incorporates and binds one or more employers and an employee labor organization to the terms and conditions of another agreement which as originally negotiated and adopted satisfies the requirements of this section;
- (5) binds signatory employers and the employee labor organization to the terms of the agreement for a specified project or period of time, cannot be unilaterally amended or terminated and contains procedures for amending the terms and conditions of the agreement;
- (6) does not terminate solely as a result of failure to make contributions to the plan; and
- (7) in addition to the provision of health coverage, provides more than the minimum requirements mandated by law with respect to the terms and conditions of employment (*e.g.*,

provides for more than minimum wage and workers' compensation).

(c) *Established or Maintained.* An employee benefit plan is not established or maintained under or pursuant to one or more collective bargaining agreements for purposes of section 3(40)(A) of the Act unless not less than 85 percent of the individuals covered by the plan are—

- (1) employees, excluding supervisors and managers, currently included in one or more groups or bargaining units of employees covered by one or more collective bargaining agreements as defined in paragraph (b) of this section which expressly refer to the plan and provide for contributions thereto; or
- (2) persons who were formerly employees described in paragraph (c)(1) of this section who are receiving workers' compensation or disability benefits, COBRA continuation coverage pursuant to Part 6 of title I of ERISA, 29 U.S.C. 1161-1168, or who have retired or separated from employment after working more than 1,000 hours a year for at least three years; or
- (3) beneficiaries of individuals included in paragraphs (c) (1) and (2) of this section.

(4) For purposes of this subsection, the following individuals covered by the plan or other arrangement shall not be counted in determining the total number of individuals covered by the plan—

- (i) employees of the plan or another plan established or maintained pursuant to the same collective bargaining agreement(s);
- (ii) employees of an employee labor organization that meets the requirements of paragraph (d)(1) of this section and that is a signatory to the collective bargaining agreement(s) pursuant to which the plan is maintained;
- (iii) persons who were formerly employees described in paragraphs (c)(4) (i) and (ii) of this section who are receiving workers' compensation or disability benefits, COBRA continuation coverage pursuant to part 6 of title I of ERISA, 29 U.S.C. 1161-1168, or who have retired or separated from employment after working more than 1,000 hours a year for at least three years; or
- (iv) beneficiaries of individuals included in paragraphs (c)(4) (i), (ii) and (iii) of this section;

(v) provided that, for purposes of paragraphs (c)(4) (i) and (ii) of this section, in order to be an employee, an individual must work at least:

- (A) 15 hours a week or 60 hours a month during the period of coverage under the plan, or

(B) Have worked more than 1000 hours in the last year and currently be on *bona fide* leave based on sickness or disability of the individual or the individual's family or on earned vacation time.

(5) For purposes of calculating whether the 85% limitation has been met, a plan or other arrangement must satisfy the requirements of paragraphs (c) (1) through (4) of this section on the last day of—

(i) each of the previous five calendar quarters; or

(ii) if the plan has been in existence for fewer than five calendar quarters, every calendar quarter during which the plan has been in existence.

#### Definitions

(1) *Employee Labor Organization.* For purposes of this section, an "employee labor organization" shall mean an organization that—

(i) represents, with respect to a particular collective bargaining agreement, the employees of each signatory employer to the agreement where:

(A) All of the employer's bargaining units covered by the agreement are certified by the National Labor Relations Board, or

(B) The employee labor organization is lawfully recognized by the signatory employer (e.g., without employer interference or domination) as the exclusive bargaining representative for the employer's bargaining unit employees covered by the agreement;

(ii) provides substantial representational services to employees regarding the terms and conditions of their employment in addition to health coverage;

(iii) does not pay commissions, fees, or bonuses to individuals, other than full-time employees of the employee labor organization, in connection with the solicitation of employers or participants;

(iv) does not utilize the services of licensed insurance agents or brokers for soliciting employers or participants;

(v) is a "labor organization" as defined in section 3(i) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. section 402(i); and

(vi) qualifies as a tax-exempt labor organization under section 501(c)(5) of the Internal Revenue Code of 1986.

(2) Supervisors and Managers. For purposes of this section, "supervisors and managers" shall mean any employees of a signatory employer to an agreement described in paragraph (b) of this section who, acting in the interest of the employer, have—

(i) Authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees; or

(ii) Responsibility to direct other employees or to adjust their grievances; or

(iii) Power to make effective recommendations concerning the actions described in paragraphs (d)(2) (i) and (ii) of this section;

as long as the exercise of the authority, responsibility and power in paragraphs (d)(2) (i), (ii) or (iii) of this section is not of a merely routine or clerical nature, but requires the use of independent judgment.

(e) *Failure to provide documents or other necessary evidence.* This section shall not apply to any plan or other arrangement if, in conjunction with an investigation or proceeding by a state or state agency, the plan, arrangement, any employee labor organization or employer which is a party to the agreement(s) at issue fails or refuses to provide the state or state agency with any document or other evidence in its possession or control that is reasonably requested by the state or state agency for the purpose of determining the status of the plan or other arrangement under state insurance laws or under this section.

(f) *Allocation of burden of proof.* In a proceeding brought to enforce state insurance laws, nothing in the proposed regulation shall be construed to prohibit a state or state agency from allocating the burden of proving the existence of all the criteria required by this section to the entity seeking to be treated as other than a MEWA.

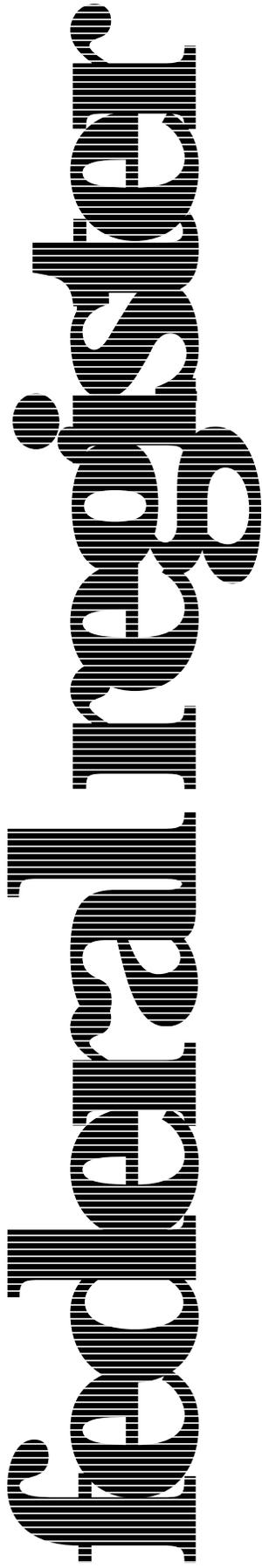
Signed at Washington, DC, this 26th day of July 1995.

**Olena Berg,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 95-18749 Filed 7-27-95; 11:12 am]

BILLING CODE 4510-29-M



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Tuesday  
August 1, 1995

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**Part III**

**Department of  
Education**

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**34 CFR Part 366**

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**Centers for Independent Living; Final  
Rule**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 366

RIN 1820-AA81

## Centers for Independent Living

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the Centers for Independent Living (CIL) program. These regulations are needed to establish indicators of minimum compliance with the evaluation standards for centers for independent living enacted in the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1992 (1992 Amendments) and the Rehabilitation Act Amendments of 1993 (1993 Amendments).

**EFFECTIVE DATE:** These regulations take effect August 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** John Nelson, U.S. Department of Education, 600 Independence Avenue, SW., Room 3326, Mary E. Switzer Building, Washington, DC 20202-2741. Telephone or TDD: (202) 205-9362.

**SUPPLEMENTARY INFORMATION:** The CIL program supports the planning for and establishing, conducting, administering, assisting, and evaluating of centers. These regulations add a new subpart G to 34 CFR part 366, which contains the regulations governing the CIL program. Section 725(b) of the Act establishes evaluation standards for centers. Section 706(b) of the Act requires the Secretary to publish indicators of what constitutes minimum compliance with the evaluation standards. Subpart G incorporates these evaluation standards and compliance indicators into the program regulations.

The CIL program is an important part of the National Education Goals. This program supports the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Rehabilitation Act Amendments of 1986, Pub. L. 99-506, required that the Secretary publish indicators of what constitutes minimum compliance with the evaluation standards under section 711(e) of the Act, as it existed prior to the 1992 Amendments, Pub. L. 102-569. The Secretary published proposed compliance indicators in the **Federal Register** in an advance notice of proposed rulemaking (ANPRM) on July 10, 1992. The Secretary received over

100 written comments during the comment period on the ANPRM, as well as 35 oral comments during a public meeting held on August 27, 1992. Following the publication of the ANPRM, the Secretary also solicited and received input from experts in the field concerning alternative approaches to the indicators.

The major elements of six of the evaluation standards proposed by the U.S. Department of Education (Department) in the ANPRM were codified as part of the Act by the 1992 Amendments, which was enacted shortly after publication of the ANPRM. In addition, the 1992 Amendments requires that the Secretary publish indicators of what constitutes minimum compliance with the evaluation standards under section 725(b) of the Act.

On October 27, 1993, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 57942) proposing to amend existing regulations for the CIL program by establishing indicators of minimum compliance with the new evaluation standards. On December 21, 1993 (58 FR 67383), the Secretary extended the comment period on the NPRM to coincide with the comment period on the proposed regulations implementing other changes to Title VII of the Act. The major issues related to the CIL program were discussed in the preamble to the NPRM.

In general, the commenters agreed with the direction that the Department had taken. However, a significant number of the commenters were opposed to the bifurcated approach of demonstrating compliance with the evaluation standards through (1) Baseline requirements that had to be met by all centers and (2) a selection of various activities that centers could choose from to earn a minimum number of bonus points. Some commenters believed that this approach placed small centers at a disadvantage. Another commenter stated that this approach appeared to establish two sets of minimum standards without establishing one absolute minimum standard. The Secretary agrees that the indicators should be simplified by eliminating the requirement that centers engage in various activities within each of the indicators to earn a minimum number of bonus points to comply with the evaluation standards. Therefore, in response to these and other public comments, the final regulations delete the bonus point approach, including all of the bonus point activities. In addition, the final regulations include

other changes to the NPRM made in response to public comment.

The Secretary also is moving to 34 CFR part 366 two of the definitions that were proposed to be added to 34 CFR part 364 in the NPRM.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, 99 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. General comments are discussed first, followed by comments on specific sections of the regulations. Because the bonus point activities have been eliminated as part of the elimination of the bonus point approach, comments on each of these bonus point activities are not discussed. In addition, technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

**General Comments**

*Comments:* One commenter expressed concern that the proposed regulations did not include or mention assistive technology services and devices. This commenter recommended that centers demonstrate how these services and devices are provided.

*Discussion:* Although a center may provide assistive services and devices to a particular individual, assistive services and devices are not listed in the Act as a specific IL service that a center is required to provide. Therefore, the Secretary does not believe centers should be required to demonstrate that they have provided these services to achieve minimum compliance with the evaluation standards for the CIL program.

*Changes:* None.

*Comments:* Several commenters recommended that the regulations place more emphasis on advocacy activities and less on service delivery. In addition, some commenters recommended that the regulations place more emphasis on outcomes and less on process.

*Discussion:* The Secretary believes that the final regulations properly reflect the emphasis on advocacy activities, service delivery, and outcomes found in the Act.

*Changes:* None.

*Comments:* None.

*Discussion:* Since publication of the NPRM, the Secretary has amended 34 CFR 75.118(a) and deleted the requirement for applications for non-competing continuation awards. In the place of an application, an applicant for

a continuation award needs to submit only a simple performance report. *Changes:* The Secretary has deleted all references to an application for a continuation award and substituted "annual performance report" in its place in these final regulations.

*Definitions (§ 366.5)*

*Comments:* None.

*Discussion:* Since publication of the NPRM, the Secretary has reviewed the final regulations for IL services programs (34 CFR part 366) that were published in the **Federal Register** on August 15, 1994 (59 FR 41880) and determined that a definitions section was inadvertently left out of part 366. This omission was the result of the separate publication of this subpart G, which included proposed definitions applicable only to part 366 but did not add a definitions section to part 366. Therefore, the Secretary is correcting this omission at this time.

*Changes:* The Secretary is adding a new "§ 366.5 *What definitions apply to this program?*" to 34 CFR part 366 of the final regulations for IL services programs. In addition, the Secretary is redesignating current "§ 366.5 *How are program funds allotted?*" as § 366.6.

*Comments:* None.

*Discussion:* Since publication of the NPRM, the Secretary has published final regulations for the IL services programs. See 59 FR 41880-41912. The Secretary included definitions for the following terms in those final regulations: "Individual with a significant disability," "Minority group," "Significant disability," and "Unserved and underserved groups or populations." Therefore, the Secretary does not believe it is necessary to repeat those definitions in these final regulations. In addition, the Secretary has determined that the proposed definitions of "consumer," "consumer service record," "cross-disability peer counseling," "information and referral services," "independent living skills training," and "peer counseling" are unnecessary. The Secretary does not believe it is necessary or useful to establish definitions for these terms through regulations. The Secretary expects that States and centers will interpret these terms in a manner that will provide for the efficient and proper administration of this program. However, comments on requirements related to the terms "decisionmaking position" and "staff position" indicate that definitions of these terms will assist centers in determining how to comply with these requirements.

*Changes:* The Secretary has deleted the definitions of "consumer,"

"consumer service record," "cross-disability peer counseling," "information and referral services," "independent living skills training," "individual with a significant disability," "minority group," "peer counseling," "significant disability," and "unserved or underserved" from the final regulations.

*Comments:* Several commenters suggested that the definition of "decisionmaking position" be clarified.

*Discussion:* The Secretary agrees that this definition should be clarified by removing the reference to first-line and second-line supervisors. The Secretary believes that any supervisor should be included in the definition of "decisionmaking position." The Secretary also believes that this definition provides flexibility for centers to determine who exercises decisionmaking authority within a center.

*Changes:* The Secretary has revised the definition of a "decisionmaking position" to clarify that any position within a center that carries the authority to establish policy for the center is included within this definition.

*Comments:* A few commenters recommended that the proposed definition of "staff position" be revised to conform with the definition of this term established by the U.S. Department of Labor (DOL). However, none of the commenters stated the DOL definition or identified where this definition can be found. One commenter suggested that decisionmakers be included in the definition of "staff position" because decisionmakers are also "staff."

*Discussion:* Neither the Secretary nor DOL staff consulted by ED staff is aware of a DOL definition of "staff position" or "decisionmaking position." Although a definition exists for the term "employee" in regulations implementing the Fair Labor Standards Act, the Secretary does not believe DOL's definition of "employee" is either helpful or necessary for purposes of this indicator. Nevertheless, nothing in the definition of "staff position" in the final regulations is inconsistent with DOL's definition of "employee." The Secretary does not agree that decisionmakers should be included as "staff" for purposes of this indicator because this would create an unnecessary overlap between the meaning of the terms "staff position" and "decisionmaking position."

*Changes:* None.

*Comments:* Several commenters recommended additional definitions for the following terms: "increasing and improving community options," "increasing and improving community

capacity," "self-help and self-advocacy," and "systems advocacy."

*Discussion:* The Secretary does not believe it is necessary or useful to establish definitions for these terms through regulations. The Secretary expects that States and centers will interpret these terms in a manner that will provide for the efficient and proper administration of this program.

*Changes:* None.

*Multi-State Centers (§ 366.62)*

*Comments:* Several commenters recommended that centers serving more than one State or region and receiving funds from multiple sources be evaluated for compliance with the evaluation standards as a single center.

*Discussion:* The Secretary agrees with the commenters. The regulations are silent on this issue and neither require nor permit the Department to conduct separate reviews of a center for each grant that the center receives from the Department. The Secretary believes section 706(c)(1) of the Act provides sufficient guidance on the Secretary's responsibility to conduct on-site compliance reviews of centers and does not believe it is necessary to regulate further on this issue.

*Changes:* None.

*Staff Positions (§ 366.63(a)(1))*

*Comments:* A few commenters agreed with the exclusion of personal care assistants, readers, and interpreters from the determination of a center's compliance with the requirement that more than 50 percent of a center's decisionmaking and staff positions be filled by individuals with disabilities. These commenters recommended adding van drivers to the list of those persons to be excluded from this determination. A couple of commenters disagreed with the exclusion of personal care assistants, readers, and interpreters from this determination.

*Discussion:* The Secretary believes that a center should have the option of excluding drivers, as well as interpreters, personal assistants, and readers, from the determination of a center's compliance with this provision.

*Changes:* The Secretary has added drivers to § 366.63(a)(1)(ii) of the final regulations and given a center the option of excluding drivers, interpreters, personal assistants, and readers from the determination of the center's compliance with this requirement.

*Comments:* Several commenters did not understand or disagreed with the proposed use of total number of hours worked by paid employees to determine a center's compliance with the requirement that more than 50 percent

of a center's decisionmaking and staff positions must be filled by individuals with disabilities. One commenter stated that this approach would be burdensome and would require unnecessary reporting and recordkeeping. A couple of commenters suggested that only "positions" be considered to determine compliance with this requirement and that the positions must be based on 40 full-time equivalent (FTE) hours per week. Another commenter questioned whether the total number of hours worked will be determined using expected or actual number of hours worked.

*Discussion:* The Secretary does not agree that this requirement is burdensome or will require unnecessary reporting and recordkeeping. Centers already are required to maintain records of the number of hours their paid employees work each week. Using the number of hours worked to determine compliance with the greater than 50 percent staffing requirement would not require additional recordkeeping. In addition, the Secretary believes that overtime hours should be excluded from this determination because extra hours worked by individual employees could produce a distorted representation of a center's work force. Also, centers with equal numbers of staff who are individuals with significant disabilities and who are not individuals with significant disabilities might simply assign overtime to their staff who are individuals with significant disabilities to comply with the greater than 50 percent staffing requirement. Excluding overtime will simplify the calculation that a center needs to make to comply with this requirement.

Finally, the Secretary believes that only those hours for which an employee is compensated should be considered to determine compliance with the greater than 50 percent staffing requirement because of the difficulty in determining the number of extra hours an employee may have worked for which the employee was not compensated.

*Changes:* The Secretary has revised § 366.63(a)(1)(iii) to exclude overtime from the determination of a center's compliance with this requirement. In addition, the Secretary has revised this provision to include only those hours for which an employee is actually paid in determining a center's compliance with this requirement.

*Comments:* Several commenters disagreed with the proposed use of the three-month period preceding the application date to determine a center's compliance with the requirement that more than 50 percent of a center's decisionmaking and staff positions must

be filled by individuals with disabilities. Several commenters recommended that the relevant period be the six-month period preceding the application date because data collected during the six-month period preceding the end of the project year would be more reliable. A couple of commenters suggested that the relevant period be the 12-month period preceding the application date.

*Discussion:* The Secretary agrees with the commenters that the three-month period is too short and that the six-month period preceding the end of the reporting period is the least burdensome timeframe for a center to gather information concerning its paid employees. The Secretary also agrees that data collected during the six-month period preceding the end of the project year will be more reliable than the three-month period proposed in the NPRM.

In addition, the NPRM was published before the Department eliminated the need for grantees to submit applications for non-competing continuation awards. Grantees are now required only to submit an annual performance report that demonstrates their compliance with statutory and regulatory requirements and the terms of the grant award. The final regulations reflect this change by eliminating any reference to continuation applications and referring instead to annual performance reports.

*Changes:* The Secretary has changed the period of consideration in § 366.63(a)(1)(iii) of the final regulations from the three-month period preceding the date the center submits its continuation application to the last six months of the period covered by the center's most recent annual performance report.

*Comments:* A couple of commenters recommended that individuals who are on family or maternity leave be counted during the three-month period preceding the application date to determine a center's compliance with the 50 percent requirement.

*Discussion:* The Secretary agrees that an individual who is on unpaid family or maternity leave during any or all of the six-month period should be included in this determination. Compliance with the 50 percent requirement should not be affected just because an employee of a center is on unpaid family or maternity leave during this six-month period. In making its determination, a center will use the number of weekly hours worked by an employee prior to going on unpaid family or maternity leave.

*Changes:* The Secretary has added language to § 366.63(a)(1)(iii) to permit

a center to include employees on unpaid family or maternity leave for determining its compliance with the 50 percent requirement. A center must include in this determination its employees who are on unpaid family or maternity leave during the six-month period.

#### *Self-Help and Self-Advocacy*

*Comments:* None.

*Discussion:* Pursuant to the NPRM, a center would have been required to provide evidence that it established written policies for promoting self-help and self-advocacy among individuals with significant disabilities. Since publication of the NPRM, the Secretary has reviewed this section and determined that whether or not a center has written policies is unimportant if the center actually promotes self-help and self-advocacy among individuals with significant disabilities.

*Changes:* The Secretary has deleted the requirement for written policies from the final regulations.

#### *Development of Peer Relationships and Peer Role Models (§ 366.63(3)(iii))*

*Comments:* One commenter stated that the use of individuals with significant disabilities as instructors is more effective than written policies and procedures.

*Discussion:* The Secretary agrees that written policies are unimportant if the center actually promotes the development of peer relationships and peer role models among individuals with significant disabilities. However, the Secretary also believes that the development of peer relationships and peer role models among individuals with significant disabilities can be accomplished in a variety of ways and does not believe it is necessary to require a center to use individuals with significant disabilities as instructors to meet this requirement.

*Changes:* The Secretary has deleted the requirement for written policies from the final regulations.

#### *Equal Access (§ 366.63(a)(4)) and Provision of Services on a Cross-Disability Basis (§ 366.63(b)(1))*

*Comments:* Some commenters recommended that the proposed regulations be clarified to permit centers to provide services or programs that are targeted or limited to persons with a single type of disability (e.g., individuals who are blind or deaf).

*Discussion:* The 1992 Amendments require that centers receiving funds under Title VII of the Act provide IL services to individuals with significant disabilities without regard to the type or

types of specific significant disabilities of the individuals or groups of individuals. Under the final regulations, a center must provide the IL core services to individuals with significant disabilities in a manner that is neither targeted nor limited to a particular type of significant disability. In addition, a center may not limit the provision of any other IL service that could be provided to individuals with a variety of significant disabilities to individuals with a particular type of significant disability. For example: A center may not limit the provision of personal assistance services to individuals who are blind. However, a center may limit the provision of Braille instruction to individuals who are blind. The availability of an IL service (other than the IL core services) may be limited to individuals with a particular type of significant disability only if that IL service is unique to the significant disability of the individuals to be served.

Whether a center may target individuals with a particular type of significant disability for a particular type of IL service is a different question. If a center has identified individuals with a particular type of significant disability as an "unserved or underserved group or population" pursuant to the definition in 34 CFR 364.4(b), the center may target this unserved or underserved group or population for any IL service, including the IL core services. However, the center may not limit the IL services it provides to only this group or population of individuals with a particular type of significant disability.

**Changes:** The Secretary has added language to § 366.63(b)(1) of the final regulations that allows a center to restrict the availability of an IL service (other than the IL core services) to individuals with a particular type of significant disability if the IL service (other than the IL core services) is unique to that significant disability of the individuals to be served.

**Comments:** One commenter recommended that the proposed regulations include an assurance that centers conduct affirmative action programs to hire members of minority groups. This commenter believes that Federal laws generally require recipients of Federal funds to conduct affirmative action programs to hire members of minority groups, even though the commenter did not identify any specific statute.

**Discussion:** Although section 725(c)(5) of the Act requires that an applicant for funds under Part C of Chapter 1 of Title VII of the Act take

affirmative action to employ and advance in employment qualified individuals with significant disabilities, nothing in Title VII requires centers receiving funds under Part C of Chapter 1 of Title VII of the Act to take affirmative action to employ and advance in employment qualified minorities.

**Changes:** None.

**Comments:** One commenter recommended that a center's written policies and materials be available in alternative formats as a means of providing equal access to individuals with disabilities.

**Discussion:** The Secretary agrees that a center should make available, as appropriate, all of its written policies and materials in alternative formats for effective communication. In addition, the Secretary believes that, as appropriate, a center should make its IL services available in alternative formats. For example, if a center provides a list of available housing units that are accessible to individuals with significant disabilities as part of its information and referral services, then the center should make this list available, as appropriate, either orally, in Braille, or on tape, if the written form of the list prevents effective communication with an individual requesting the list.

**Changes:** The Secretary has added a new § 366.63(a)(5) to the final regulations that requires a center to make available, as appropriate, all of its written policies and materials in alternative formats for effective communication. In addition, this new provision requires a center to make available, as appropriate, its IL services in alternative formats.

#### *Cross-Disability (§ 366.63(b))*

**Comments:** One commenter recommended that a center be able to comply with the cross-disability requirement by demonstrating a fairly even distribution of services across a simple majority of the Federal disability reporting categories.

**Discussion:** The Secretary agrees that a center that demonstrates a fairly even distribution of services across a simple majority of the Federal disability reporting categories is presumed to be in compliance with the cross-disability requirement, if no evidence exists that the center has denied eligibility for an IL service to any individual with a significant disability based on the type of the individual's disability. Because other evidence may exist that a center is not in compliance with this requirement, the Secretary does not

believe it is appropriate to create an irrebuttable presumption of compliance.

**Changes:** None.

**Comments:** One commenter recommended that the proposed regulations be clarified to ensure that all of the core services are available to an individual regardless of the individual's disability. Another commenter recommended that the proposed regulations be revised to prevent a center from relying on an individual's secondary disability to comply with the cross-disability requirement. Another commenter recommended that centers maintain a tracking system to ensure that all individuals in need of IL services are served by the center.

**Discussion:** The Secretary agrees that the language in the proposed regulations should be clarified to ensure that all of the core services are available to an individual regardless of the individual's disability and to prevent a center from relying on an individual's disability (whether "secondary" or otherwise) to comply with the cross-disability requirement. By forbidding a center from targeting or limiting the IL core services based on an individual's type of significant disability, the classification of an individual's significant disability as "primary" or "secondary" will be irrelevant for purposes of providing the IL core services and for complying with the cross-disability requirement.

In addition, the Secretary believes that the reporting requirements and recordkeeping requirements are adequate to prevent discrimination on the basis of type of disability and to ensure that centers provide the IL core services to individuals with a broad range of disabilities. Therefore, the Secretary does not agree that these regulations should require centers to maintain a tracking system as suggested by the commenter.

**Changes:** The Secretary has added language to § 366.63(b)(3) of the final regulations to clarify that a center may not target or limit the IL core services to any individual or group of individuals with significant disabilities based on the type of significant disability of the individual or group of individuals.

#### *IL Goals (§ 366.63(c))*

**Comments:** One commenter recommended that centers be required to achieve a 25 percent success rate on the IL goals identified by consumers. Another commenter stated that the attempt to achieve an IL goal is as important as achieving it.

**Discussion:** The Secretary does not believe it is appropriate to establish a percentage that centers must attain for the achievement of IL goals developed

by consumers. The populations served by different centers may vary so widely that a reasonable percentage for one center may be unrealistic for another center.

*Changes:* None.

*Comments:* A few commenters stated that requiring a center to measure or track the achievement of IL goals by consumers is inappropriate or may be nearly impossible.

*Discussion:* Any measurement of the achievement of IL goals would require uniformity to be meaningful. However, IL goals and how they are achieved is not uniform. Therefore, the Secretary agrees that requiring a center to measure the achievement of IL goals by a consumer is inappropriate. However, the Secretary believes that maintaining records of the IL goals that consumers believe they have achieved is appropriate and feasible, both for the consumer and the center.

*Changes:* The Secretary has deleted the requirement that a center measure the achievement of IL goals by consumers but has specified that consumer service records meet the requirements of 34 CFR 364.53. Section 364.53 includes the requirements that a consumer service record include (1) the IL goals or objectives established and achieved by the consumer; and (2) either an IL plan or a waiver signed by the consumer that an IL plan is unnecessary.

*Comments:* None.

*Discussion:* Pursuant to the NPRM, a center was required to facilitate the development and achievement of IL goals selected by individuals with significant disabilities who request assistance from the center. Since publication of the NPRM, the Secretary has reviewed this section and determined that compliance with this standard can best be accomplished by requiring a center to assess consumer satisfaction with the center's services and policies in facilitating consumers' achievement of IL goals. In addition, the Secretary believes compliance will be further insured by requiring a center to provide this information to its governing board and the appropriate SILC. Finally, the Secretary believes that notifying consumers of their right to develop or waive the development of an IL plan (ILP) also is important to insure compliance with this standard.

*Changes:* The Secretary has added a requirement to the final regulations that a center (1) assess consumer satisfaction with the center's services and policies in facilitating consumers' achievement of IL goals and provide this information to its governing board and the appropriate SILC; and (2) notify all

consumers of their right to develop or waive the development of an ILP.

*Comments:* A few commenters recommended that any reporting requirements be limited in scope and suggested that a consumer service record not be required for "casual services." A couple of commenters suggested that an "intake sheet" be sufficient as a case service record. Another commenter recommended that a case service record include only the consumer's application form and any notes by the center staff member who works with the consumer.

*Discussion:* The information that must be included in a consumer service record is described in 34 CFR 364.53. The Secretary believes that this information is necessary for the proper and efficient administration of this program. An "intake sheet" or an application form and notes made by the center's staff member who works with the consumer are sufficient if they include the information required by 34 CFR 364.53.

*Changes:* The Secretary has added language to the definition of consumer service record in the final regulations to clarify that a consumer service record must meet the requirements of 34 CFR 364.53.

#### *Community Options and Community Capacity (§ 366.63(d))*

*Comments:* One commenter stated that this indicator is meaningless without further explanation and definitions of the required activities. Another commenter recommended that these regulations require more specific measures of compliance. Another commenter recommended that the term "community advocacy," which is used in this provision, be defined. Another commenter stated that clarification is needed on what constitutes a center's service area.

*Discussion:* The Secretary does not believe it is necessary to define further the activities that a center must carry out to comply with this indicator. The Secretary believes that each center should have flexibility in defining these activities within the context of its own operating environment and service area. The Secretary also expects that each center will define its own service area and describe the area it expects to serve in its application for funding under this program. Finally, the Secretary believes that the term "community advocacy" is encompassed by the term "systems (or systemic) advocacy," which is defined in 34 CFR 364.4(b) of the IL regulations. The IL regulations were published on August 15, 1994 (59 FR 41880).

*Changes:* None.

*Comments:* A few commenters recommended that centers not be responsible for removing community barriers or for serving as a catalyst for change in the community. One of these commenters recommended that centers not be evaluated on how well the community responds to the needs of individuals with disabilities.

*Discussion:* Nothing in the proposed regulations required a center to remove community barriers or to serve as a catalyst for change in the community. Furthermore, nothing in the proposed regulations provided that centers would be evaluated on how well the community responds to the needs of individuals with disabilities. However, to the extent that a center engages in systems advocacy, the Secretary fully expects that a center will engage in activities that are designed to accomplish these goals.

*Changes:* None.

*Comments:* One commenter recommended that a center's compliance with the community options and community capacity indicator not be based solely on the center's activities within its service area.

*Discussion:* Although a center may engage in advocacy or other activities that may have an impact outside of its service area, the Secretary believes that a center's performance under its Title VII grant must be assessed in terms of the beneficiaries the grant was intended to serve, i.e., the individuals within the center's service area.

*Changes:* None.

*Comments:* One commenter recommended that centers be required to provide annual community accessibility updates to help centers develop strategies for prioritizing the removal of identified community barriers and to document the results of activities that have been completed to remove those barriers.

*Discussion:* The Secretary does not believe that centers should be required to develop strategies for prioritizing the removal of identified community barriers. The Secretary believes it is sufficient for a center to comply with the requirements already established for this indicator.

*Changes:* None.

*Comments:* One commenter recommended that outreach materials be provided in accessible formats.

*Discussion:* The Secretary believes that new § 366.63(a)(5) will ensure that a center will provide outreach materials in accessible formats.

*Changes:* None.

*IL Services (§ 366.63(e))*

*Comments:* One commenter stated that cross-disability counseling is not a valid service because the commenter believes that "peer" means a person with a similar disability.

*Discussion:* The Secretary disagrees that "peer counseling" is limited to counseling by an individual with a disability that is similar to the disability of the consumer. The Secretary believes that an individual with a significant disability may engage in peer counseling for another individual with a significant disability, regardless of the types of significant disabilities of the two individuals.

*Changes:* None.

*Resource Development (§ 366.63(f))*

*Comments:* One commenter recommended that a center be rewarded only for specific activities that result in increased funding and that automatic State appropriations not be included in determining the success of a center's fundraising activities.

*Discussion:* The Secretary encourages States to participate in the funding of centers. Therefore, the Secretary believes it is appropriate to include State funds in determining the success of a center's fundraising activities.

*Changes:* None.

*Executive Order 12866*

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

**Paperwork Reduction Act of 1980**

Sections 366.62 and 366.63 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

States and centers are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 40 hours per response for 200 respondents, including the time for gathering and maintaining the data needed and for completing and reviewing the collection of information.

**Intergovernmental Review**

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 366**

Education, Grant programs—social programs, Vocational rehabilitation, Recordkeeping and reporting requirements.

(Catalog of Federal Domestic Assistance Number 84.132—Centers for Independent Living)

Dated: July 26, 1995.

**Richard W. Riley,**

*Secretary of Education.*

The Secretary amends Part 366 of Title 34 of the Code of Federal Regulations as follows:

**PART 366—CENTERS FOR INDEPENDENT LIVING**

1. The authority citation for part 366 is revised to read as follows:

**Authority:** 29 U.S.C. 796d-1(b) and 796f-796f-6, unless otherwise noted.

**§ 366.6 [Redesignated from § 366.5]**

2. Section 366.5 is redesignated as § 366.6.

3. A new § 366.5 is added to read as follows:

**§ 366.5 What definitions apply to this program?**

*Decisionmaking position* means the executive director, any supervisory position, and any other policymaking position within the center.

*Staff position* means a paid non-contract position within the center that is not included within the definition of a "decisionmaking position."

(Authority: 29 U.S.C. 796a(a))

4. Part 366 is amended by adding a new Subpart G consisting of §§ 366.60 through 366.63 to read as follows:

**Subpart G—Evaluation Standards and Compliance Indicators**

Sec.

366.60 What are project evaluation standards?

366.61 What are the compliance indicators?

366.62 What are the requirements for continuation funding?

366.63 What evidence must a center present to demonstrate that it is in minimum compliance with the evaluation standards?

**Subpart G—Evaluation Standards and Compliance Indicators****§ 366.60 What are the project evaluation standards?**

To be eligible to receive funds under this part, an applicant must agree to comply with the following evaluation standards:

(a) *Evaluation standard 1—*

*Philosophy.* The center shall promote and practice the IL philosophy of—

(1) Consumer control of the center regarding decisionmaking, service delivery, management, and establishment of the policy and direction of the center;

(2) Self-help and self-advocacy;

(3) Development of peer relationships and peer role models;

(4) Equal access of individuals with significant disabilities to all of the center's services, programs, activities, resources, and facilities, whether publicly or privately funded, without regard to the type of significant disability of the individual; and

(5) Promoting equal access of individuals with significant disabilities to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, on the same basis that access is provided to other individuals with disabilities and to individuals without disabilities.

(b) *Evaluation standard 2—Provision of services.* (1) The center shall provide IL services to individuals with a range of significant disabilities.

(2) The center shall provide IL services on a cross-disability basis (i.e., for individuals with all different types of significant disabilities, including individuals with significant disabilities who are members of populations that are unserved or underserved by programs under Title VII of this Act).

(3) The center shall determine eligibility for IL services. The center may not base eligibility on the presence of any one specific significant disability.

(c) *Evaluation standard 3—Independent living goals.* The center shall facilitate the development and achievement of IL goals selected by individuals with significant disabilities who seek assistance in the development and achievement of IL goals from the center.

(d) *Evaluation standard 4—Community options.* The center shall conduct activities to increase the availability and improve the quality of community options for IL to facilitate the development and achievement of IL goals by individuals with significant disabilities.

(e) *Evaluation standard 5—Independent living core services.* The center shall provide IL core services and, as appropriate, a combination of any other IL services specified in section 7(30)(B) of the Act.

(f) *Evaluation standard 6—Activities to increase community capacity.* The center shall conduct activities to increase the capacity of communities within the service area of the center to meet the needs of individuals with significant disabilities.

(g) *Evaluation standard 7—Resource development activities.* The center shall conduct resource development activities to obtain funding from sources other than Chapter 1 of Title VII of the Act.

(Authority: 29 U.S.C. 796f-4)

**§ 366.61 What are the compliance indicators?**

(a) The compliance indicators establish the activities that a center shall carry out to demonstrate minimum compliance with the evaluation standards in § 366.60.

(b) If a center fails to satisfy any one of the indicators, the center is out of compliance with the evaluation standards.

(Authority: 20 U.S.C. 796d-1(b))

**§ 366.62 What are the requirements for continuation funding?**

(a) To be eligible to receive a continuation award for the third or any

subsequent year of a grant, a center shall—

(1) Have complied fully during the previous project year with all of the terms and conditions of its grant;

(2) Provide adequate evidence in its most recent annual performance report that the center is in minimum compliance with the evaluation standards in § 366.60 (Cross-reference: See §§ 366.50 (h) and (i) and 34 CFR 75.118(a)); and

(3) Meet the requirements in this Part 366.

(b) If a recipient receives funding for more than one center, each individual center that receives a continuation award shall meet the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820-0606.)

(Authority: 29 U.S.C. 711(c), 796d-1(b), 796e, and 796f-4)

**§ 366.63 What evidence must a center present to demonstrate that it is in minimum compliance with the evaluation standards?**

(a) *Compliance indicator 1—Philosophy.*

(1) *Consumer control.*

(i) The center shall provide evidence in its most recent annual performance report that—

(A) Individuals with significant disabilities constitute more than 50 percent of the center's governing board; and

(B) Individuals with disabilities constitute more than 50 percent of the center's—

(1) Employees in decisionmaking positions; and

(2) Employees in staff positions.

(ii) A center may exclude personal assistants, readers, drivers, and interpreters employed by the center from the requirement in paragraph (a)(1)(B) of this section.

(iii) The determination that over 50 percent of a center's employees in decisionmaking and staff positions are individuals with disabilities must be based on the total number of hours (excluding any overtime) for which employees are actually paid during the last six-month period covered by the center's most recent annual performance report. However, a center must include in this determination its employees who are on unpaid family or maternity leave during this six-month period.

(2) *Self-help and self-advocacy.* The center shall provide evidence in its most recent annual performance report that it promotes self-help and self-advocacy among individuals with significant disabilities (e.g., by conducting activities to train individuals with significant disabilities in self-advocacy).

(3) *Development of peer relationships and peer role models.* The center shall provide evidence in its most recent annual performance report that it promotes the development of peer relationships and peer role models among individuals with significant disabilities (e.g., by using individuals with significant disabilities who have achieved IL goals [whether the goals were achieved independently or through assistance and services provided by a center] as instructors [volunteer or paid] in its training programs or as peer counselors).

(4) *Equal access.* The center shall provide evidence in its most recent annual performance report that it—

(i) Ensures equal access of individuals with significant disabilities, including communication and physical access, to the center's services, programs, activities, resources, and facilities, whether publicly or privately funded. Equal access, for purposes of this paragraph, means that the same access is provided to any individual with a significant disability regardless of the individual's type of significant disability.

(ii) Advocates for and conducts activities that promote the equal access to all services, programs, activities, resources, and facilities in society, whether public or private, and regardless of funding source, for individuals with significant disabilities. Equal access, for purposes of this paragraph, means that the same access provided to individuals without disabilities is provided in the center's service area to individuals with significant disabilities.

(5) *Alternative formats.* To ensure that a center complies with § 366.63(a)(4) and for effective communication, a center shall make available in alternative formats, as appropriate, all of its written policies and materials and IL services.

(b) *Compliance indicator 2—Provision of services on a cross-disability basis.* The center shall provide evidence in its most recent annual performance report that it—

(1) Provides IL services to eligible individuals or groups of individuals without restrictions based on the particular type or types of significant disability of an individual or group of individuals, unless the restricted IL service (other than the IL core services) is unique to the significant disability of the individuals to be served;

(2) Provides IL services to individuals with a diversity of significant disabilities and individuals who are members of populations that are

unserved or underserved by programs under Title VII of the Act; and

(3) Provides IL core services to individuals with significant disabilities in a manner that is neither targeted nor limited to a particular type of significant disability.

(c) *Compliance indicator 3—Independent living goals.* (1) The center shall provide evidence in its most recent annual performance report that it—

(i) Maintains a consumer service record that meets the requirements of 34 CFR 364.53 for each consumer;

(ii) Facilitates the development and achievement of IL goals selected by individuals with significant disabilities who request assistance from the center;

(iii) Provides opportunities for consumers to express satisfaction with the center's services and policies in facilitating their achievement of IL goals and provides any results to its governing board and the appropriate SILC; and

(iv) Notifies all consumers of their right to develop or waive the development of an IL plan (ILP).

(2) The center shall provide evidence in its most recent annual performance report that the center maintains records on—

(i) The IL goals that consumers receiving services at the center believe they have achieved;

(ii) The number of ILPs developed by consumers receiving services at the center; and

(iii) The number of waivers signed by consumers receiving services at the center stating that an ILP is unnecessary.

(d) *Compliance indicator 4—Community options and community capacity.* The center shall provide evidence in its most recent annual performance report that, during the project year covered by the center's most recent annual performance report, the center promoted the increased availability and improved quality of community-based programs that serve individuals with significant disabilities and promoted the removal of any existing architectural, attitudinal, communication, environmental, or other type of barrier that prevents the full integration of these individuals into society. This evidence must demonstrate that the center performed at least one activity in each of the following categories:

(1) Community advocacy.

(2) Technical assistance to the community on making services, programs, activities, resources, and facilities in society accessible to individuals with significant disabilities.

(3) Public information and education.

(4) Aggressive outreach to members of populations of individuals with significant disabilities that are unserved or underserved by programs under Title VII of the Act in the center's service area.

(5) Collaboration with service providers, other agencies, and organizations that could assist in improving the options available for individuals with significant disabilities to avail themselves of the services,

programs, activities, resources, and facilities in the center's service area.

(e) *Compliance indicator 5—IL core services and other IL services.* The center shall provide evidence in its most recent annual performance report that it provides—

(1) Information and referral services to all individuals who request this type of assistance or services from the center in formats accessible to the individual requesting these services; and

(2) As appropriate in response to requests from individuals with significant disabilities who are eligible for IL services from the center, the following services:

(i) IL skills training.

(ii) Peer counseling (including cross-disability peer counseling).

(iii) Individual and systems advocacy.

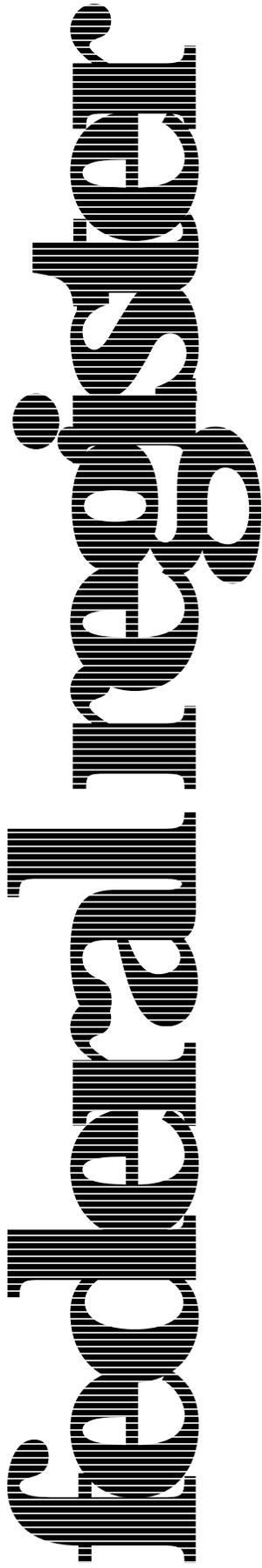
(iv) A combination, as appropriate, of any two or more of the IL services defined in section 7(30)(B) of the Act.

(f) *Compliance indicator 6—Resource development activities.* The center shall provide evidence in its most recent annual performance report that it has conducted resource development activities within the period covered by the performance report to obtain funding from sources other than Chapter 1 of Title VII of the Act.

(Approved by the Office of Management and Budget under control number 1820-0606.)  
(Authority: 29 U.S.C. 711(c), 796d-1(b), and 796f-4)

[FR Doc. 95-18774 Filed 7-31-95; 8:45 am]

BILLING CODE 4000-01-P



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Tuesday  
August 1, 1995

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**Part IV**

**Department of the Treasury**

Office of the Comptroller of the Currency

**Federal Reserve System**

**Federal Deposit Insurance  
Corporation**

**Department of the Treasury**

Office of Thrift Supervision

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12 CFR Part 3, et al.

Capital; Risk-Based Capital Guidelines;  
Capital Adequacy Guidelines; Capital  
Maintenance; Final Rule

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Parts 3 and 6**

[Docket No. 95-18]

RIN 1557-AB14

**FEDERAL RESERVE SYSTEM****12 CFR Parts 208 and 225**

[Docket No. R-0887]

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 325**

RIN 3064-AB61

**DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****12 CFR Parts 565 and 567**

[Docket No. 95-140]

RIN 1550-AA84

**Capital; Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance**

**AGENCIES:** Office of the Comptroller of the Currency (OCC), Department of the Treasury; Board of Governors of the Federal Reserve System (FRB); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS), Department of the Treasury.

**ACTION:** Joint interim rule with request for comments.

**SUMMARY:** The OCC, FRB, FDIC, and OTS (the Agencies) are amending their capital adequacy standards for banks, bank holding companies, and savings associations (banking organizations) to treat originated mortgage servicing rights (OMSRs) the same as purchased mortgage servicing rights (PMSRs) for regulatory capital purposes. The interim capital rule was developed in response to the Financial Accounting Standards Board's issuance of Statement No. 122, "Accounting for Mortgage Servicing Rights," which eliminates the accounting distinction between OMSRs and PMSRs by requiring OMSRs to be capitalized as balance sheet assets, a treatment previously required only for PMSRs. Under the interim rule, both OMSRs and PMSRs are "included in" (i.e., not deducted from) regulatory capital when determining Tier 1 (core) capital for purposes of the Agencies' risk-based and leverage capital standards, and when calculating

tangible equity for purposes of prompt corrective action, subject to the regulatory capital limitations that previously applied only to PMSRs. Thus, the effect of the interim rule is to permit OMSRs in regulatory capital, subject to certain limitations.

**DATES:** The interim rule is effective August 1, 1995. Comments must be received by October 2, 1995.

**ADDRESSES:** Commenters should respond to their primary federal regulator. All comments will be shared among all of the Agencies.

**OCC:** Written comments should be submitted to Docket No. 95-18, Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219, Attention: Karen Carter. Comments will be available for inspection and photocopying at that address.

**FRB:** Comments should refer to Docket No. R-0887, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW. (between Constitution Avenue and C Street) at any time. Comments received will be available for inspection in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

**FDIC:** Written comments shall be addressed to Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to Room F-402, 1776 F Street NW., Washington, DC 20429, on business days between 8:30 a.m. and 5:00 p.m. (Fax number: (202) 898-3838; Internet address: comments@fdic.gov) Comments will be available for inspection at the FDIC's Reading Room, Room 7118, 550 17th Street NW., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

**OTS:** Send comments to Chief, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 95-140. These submissions may be hand-delivered to 1700 G Street, N.W. between 9 a.m. and 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7755. Comments will

be available for inspection at 1700 G Street, N.W., from 1:00 p.m. until 4:00 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:**  
**OCC:** Christine A. Smith, Esq., Professional Accounting Fellow, (202/874-5180), Roger Tufts, Senior Economic Advisor, (202/874-5070), Office of the Chief National Bank Examiner; Mitchell Stengel, Financial Economist, (202/874-5431), Risk Analysis Division; Ronald Shimabukuro, Senior Attorney, or P. Moni SenGupta, Attorney, (202/874-5090), Legislative and Regulatory Activities Division, Washington, D.C. 20219.

**FRB:** Arthur W. Lindo, Supervisory Financial Analyst, (202/452-2695) or Thomas R. Boemio, Supervisory Financial Analyst, (202/452-2982), Division of Banking Supervision and Regulation. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

**FDIC:** For supervisory issues, Stephen G. Pfeifer, Examination Specialist, (202/898-8904), Accounting Section, Division of Supervision; for legal issues, Jules E. Bernard, Counsel, (202/898-3731), Legal Division.

**OTS:** John F. Connolly, Senior Program Manager for Capital Policy, (202/906-6465), or Timothy J. Stier, Assistant Chief Accountant, (202/906-5699), Supervision; Deborah Dakin, Assistant Chief Counsel, (202/906-6445), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

**SUPPLEMENTARY INFORMATION:****Background**

Mortgage servicing rights are the contractual obligations undertaken by an institution to provide servicing for mortgage loans owned by others, typically for a fee. Originated mortgage servicing rights (OMSRs) generally represent the servicing rights acquired when an institution originates mortgage loans and subsequently sells the loans but retains the servicing rights. Purchased mortgage servicing rights (PMSRs) are mortgage servicing rights that have been purchased from other parties.

In May 1995, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 122 (FAS 122), "Accounting for Mortgage Servicing Rights." FAS 122 eliminates the accounting distinction between

OMSRs and PMSRs and the need for companies engaged in mortgage banking to sell OMSRs in order to realize their value for financial statement purposes. FAS 122 specifies that capitalized mortgage servicing rights are to be treated as a single type of asset, regardless of how these rights were acquired. As a result, upon an institution's adoption of FAS 122, both OMSRs and PMSRs must be capitalized as balance sheet assets, a treatment previously permitted only for PMSRs. Both types of mortgage servicing rights may be reported in the same balance sheet asset category. Thus, on a prospective basis, under generally accepted accounting principles (GAAP), there generally will no longer be any significant accounting distinction between OMSRs and PMSRs for reporting, valuation, or disclosure purposes.

Prior to the issuance of FAS 122, GAAP referred to PMSRs as intangible assets. FAS 122 eliminates the reference to PMSRs as intangible assets but does not characterize mortgage servicing rights as either intangible or tangible assets. FAS 122 indicates that no characterization of mortgage servicing rights as either intangible or tangible assets is necessary because similar characterizations are not made for most other assets. However, FAS 122 also indicates that the elimination of the intangible asset reference does not imply that mortgage servicing rights are tangible assets.

FAS 122 requires that mortgage servicing rights be considered impaired whenever their fair value is less than their amortized cost. A valuation allowance is required for the amount of any impairment, which must be measured by stratifying mortgage servicing rights based on one or more of the predominant risk characteristics of the underlying loans. These characteristics may include loan type, size, note rate, date of origination, term and geographic location.

FAS 122 is effective for financial statements prepared in accordance with GAAP for fiscal years beginning after December 15, 1995, although FASB encourages earlier application. On June 21, 1995, the Federal Financial Institutions Examination Council (FFIEC) announced that banks must adopt FAS 122 for purposes of the Reports of Condition and Income (Call Report) as of the same effective date and with earlier application permitted to the extent allowable in this accounting standard. The OTS requires savings associations to follow GAAP for regulatory reporting and, thus, FAS 122's effective date provisions are also

applicable for Thrift Financial Report purposes.<sup>1</sup>

### Interim Amendments to the Capital Adequacy Guidelines

Banking organizations adopting FAS 122 early could reflect OMSRs on their regulatory reports as soon as June 30, 1995.<sup>2</sup> In view of this implementation schedule, the Agencies are now adopting an interim rule that is effective immediately in order to give banking organizations that adopt FAS 122 early direction on the regulatory capital treatment of OMSRs.

Under the interim rule, for risk-based and leverage capital purposes, mortgage servicing rights, including both PMSRs and OMSRs<sup>3</sup>, and purchased credit card relationships (PCCRs) may be included in capital only to the extent that, in the aggregate, they do not exceed 50 percent of Tier 1 (core) capital.<sup>4</sup> For purposes of calculating Tier 1 (core) capital, all mortgage servicing rights are valued—as PMSRs previously were—at the lesser of 90 percent of fair market value or 100 percent of their book value (net of any valuation allowance). In addition, under the interim rule, the amount of mortgage servicing rights that may be included in

<sup>1</sup> Commercial banks are required to file quarterly Consolidated Reports of Condition and Income (Call Reports) and should report OMSRs and PMSRs in Schedule RC-M (Memoranda), item 6.a., "Mortgage servicing rights" and in Schedule RC (Balance Sheet), item 10, "Intangible assets." Bank holding companies with total consolidated assets of \$150 million or more file quarterly Consolidated Financial Statements for Bank Holding Companies (FR Y-9C reports) with the Federal Reserve, and should report OMSRs and PMSRs in Schedule HC—Consolidated Balance Sheet, item 10.a., "Mortgage servicing rights." Savings Associations are required to file quarterly Thrift Financial Reports and should report capitalized OMSRs and PMSRs on Thrift Financial Report Schedule SC, line 640, which is currently labeled "purchased loan servicing rights."

<sup>2</sup> Banking organizations that do not adopt FAS 122 early may not capitalize OMSRs in 1995 and would not reflect the asset on their regulatory reports. In the interim, such institutions should continue to report PMSRs in accordance with the existing Call Report and Thrift Financial Report instructions until they adopt FAS 122 in 1996.

<sup>3</sup> Due to the 50 percent of Tier 1 (core) capital limitation, it is possible that at least some of the OMSRs an institution reports as balance sheet assets for Call Report and Thrift Financial Report purposes may be required to be deducted in computing regulatory capital under this interim rule. For purposes of determining the amount of any OMSRs that would be deducted (or disallowed) under this 50 percent of Tier 1 (core) capital limitation, institutions may choose to reduce their otherwise disallowed OMSRs by the amount of any associated deferred tax liability. Any such deferred tax liability used in this manner would not be available for the institution to use in determining the amount of any net deferred tax assets that may be included in Tier 1 (core) capital for risk-based and leverage capital purposes.

<sup>4</sup> The 25 percent of Tier 1 (core) capital sublimit on PCCRs is not affected by this rulemaking. In addition, all other intangible assets continue to be fully deducted from capital.

tangible equity for purposes of prompt corrective action is the same as that permitted in Tier 1 (core) capital.

The Agencies are adopting this interim rule because they believe that the risk characteristics of OMSRs are similar to those of PMSRs. In view of the subjectivity and uncertainty surrounding the valuation of PMSRs and the consequent risks resulting from a high concentration of these assets, the Agencies previously decided to limit the amount of PMSRs that an institution could include in regulatory capital. Therefore, the Agencies believe that it is consistent to limit OMSRs in the same manner as PMSRs, pending a review of the comments received on this interim rule and the Agencies' resulting determination of the appropriate capital treatment of mortgage servicing rights. This interim capital rule is consistent with the recommendations provided on June 21, 1995, to the Agencies by the FFIEC's Task Force on Supervision.

The Agencies are seeking comment on all aspects of this interim rule. The Agencies also request specific comment on the following:

(1) For regulatory capital purposes, the Agencies have considered PMSRs as intangible assets. This determination was based, in part, on the prior GAAP characterization of this asset. FAS 122 indicates indifference toward any characterization of mortgage servicing rights (both PMSRs and OMSRs) as intangible or tangible assets.

(a) Should mortgage servicing rights be viewed as intangible assets for regulatory capital purposes?

(b) If mortgage servicing rights are considered to be intangible assets for regulatory capital purposes, should they continue to be subject to the regulatory capital limitations previously applied only to PMSRs?

(c) If mortgage servicing rights are considered to be tangible assets for regulatory capital purposes, what regulatory capital limitations, if any, should apply?

(2) How should any deferred tax liability associated with PMSRs and OMSRs be treated when calculating a regulatory capital limit?

(3) When an institution originates mortgage loans and swaps them for mortgage-backed securities, including agency guaranteed mortgage-backed securities, FAS 122 requires the institution to attribute a separate cost basis to the loan and servicing right components of such mortgage-backed securities. What is the appropriate regulatory capital treatment of mortgage servicing rights that are associated with mortgage-backed securities that are

acquired in swap transactions and included in an institution's assets?

### Regulatory Flexibility Act Analysis

The Agencies do not believe that the adoption of their interim rule will have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accordance with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because of the pre-FAS 122 accounting treatment of OMSRs, no banking organizations—large or small—currently carry any OMSRs, which are the subject of the interim rule, as assets on their balance sheets or include them in capital. The Agencies' interim rule, in combination with the requirement that institutions adopt FAS 122 for regulatory reporting purposes, allows banking organizations to increase their regulatory capital by including OMSRs in assets and Tier 1 (core) capital. This interim rule would only affect those banking organizations that originate and subsequently sell or securitize mortgage loans but retain the servicing rights. In addition, FAS 122 is to be applied prospectively. As a result, OMSRs will only need to be capitalized for those transactions that occur after the date as of which an institution adopts FAS 122. Moreover, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than \$150 million, this proposal will not affect such companies.

### OCC and OTS Executive Order 12866 Statement

The Comptroller of the Currency and the Director of the OTS have determined that the interim rule described in this notice is not a significant regulatory action under Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

### Paperwork Reduction Act and Regulatory Burden

The Agencies have determined that this interim rule will not increase the regulatory paperwork burden of banking organizations pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325, 108 Stat. 2160) provides that the federal banking agencies must consider the administrative burdens and benefits of any new regulation that imposes additional requirements on insured depository institutions. The Agencies have found that their interim rule does

not impose any additional reporting or recordkeeping burdens. Section 302 also requires such a rule to take effect on the first day of the calendar quarter following final publication of the rule, unless the agency, for good cause, determines an earlier effective date is appropriate. The Agencies have decided that their interim rule should be effective immediately because it provides institutions with information on the regulatory capital treatment for OMSRs that may begin to be reported on the June 30, 1995 Call Report and Thrift Financial Report.

### Administrative Procedure Act

Pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553, the Agencies find good cause for issuing this interim rule in advance of the receipt of comments from interested parties and for waiving the 30-day delay of effectiveness provisions of the Administrative Procedures Act. This "good cause" determination is based upon institutions' immediate need to know how to treat OMSRs in computing regulatory capital. This guidance is necessary because the Financial Accounting Standards Board, on May 12, 1995, revised the treatment of OMSRs under generally accepted accounting principles by adopting Statement of Financial Accounting Standard No. 122 (FAS 122), "Accounting for Mortgage Servicing Rights," which institutions may adopt beginning in reports prepared as of June 30, 1995. Under FAS 122, OMSRs will be capitalized and included in assets with corresponding increases to an institution's capital base. Prior to the issuance of FAS 122, OMSRs were not capitalized and not recorded on the balance sheet. This interim rule allows institutions that early adopt FAS 122 in their June 30, 1995, regulatory reports to include OMSRs in assets and regulatory capital, subject to certain limitations.

### OCC and OTS Unfunded Mandates Act Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104-4 (Unfunded Mandates Act) (signed into law on March 22, 1995) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory

alternatives before promulgating a rule. As discussed in the preamble, this interim rule, in conjunction with FAS 122, permits OMSRs to be capitalized as balance sheet items, a treatment that was previously only permitted for PMSRs. Under the interim rule, OMSRs will be included in calculating Tier 1 (core) capital for risk-based capital and leverage capital standards subject to the same constraints that are imposed on PMSRs. Thus, no additional cost of \$100 million or more, to State, local, or tribal governments or to the private sector will result from this rule. Accordingly, the OCC and the OTS have not prepared a budgetary impact statement nor specifically addressed any regulatory alternatives.

### List of Subjects

#### 12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Reporting and recordkeeping requirements, Risk.

#### 12 CFR Part 6

Capital, National banks.

#### 12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Securities.

#### 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

#### 12 CFR Part 325

Bank deposit insurance, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

#### 12 CFR Part 565

Administrative practice and procedure, Capital, Savings associations.

#### 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

### Authority and Issuance

Office of the Comptroller of the Currency

#### 12 CFR Chapter I

For the reasons set out in the joint preamble, the Office of the Comptroller

of the Currency amends 12 CFR chapter I as set forth below.

**PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES**

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

**Authority:** 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

2. In part 3, paragraph (c)(2) of § 3.100 is revised to read as follows:

**§ 3.100 Capital and surplus.**

(c) \* \* \*  
 (2) Mortgage servicing rights;

3. In appendix A to part 3, paragraph (c)(13) of section 1 is revised to read as follows:

**Appendix A to Part 3—Risk-Based Capital Guidelines**

*Section 1. Purpose, Applicability of Guidelines, and Definitions*

(13) *Intangible assets* include mortgage servicing rights, purchased credit card relationships (servicing rights), goodwill, favorable leaseholds, and core deposit value.

4. In appendix A to part 3, paragraphs (c) introductory text, (c)(1), and (c)(3) of section 2 are revised to read as follows:

*Section 2. Components of Capital*

(c) *Deductions From Capital.* The following items are deducted from the appropriate portion of a national bank's capital base when calculating its risk-based capital ratio:

(1) *Deductions from Tier 1 capital.* The following items are deducted from Tier 1 capital before the Tier 2 portion of the calculation is made:

- (i) All goodwill subject to the transition rules contained in section 4(a)(1)(ii) of this appendix A;
- (ii) Other intangible assets, except as provided in section 2(c)(2) of this appendix A; and
- (iii) Deferred tax assets, except as provided in section 2(c)(3) of this appendix A, that are dependent upon future taxable income, which exceed the lesser of either:

(A) The amount of deferred tax assets that the bank could reasonably expect to realize within one year of the quarter-end Call Report, based on its estimate of future taxable income for that year; or

(B) 10% of Tier 1 capital, net of goodwill and all intangible assets other than mortgage servicing rights and purchased credit card relationships, and before any disallowed deferred tax assets are deducted.

(2) *Qualifying intangible assets.* Subject to the following conditions, mortgage servicing

rights (originated and purchased) and purchased credit card relationships need not be deducted from Tier 1 capital:

(i) The total of all intangible assets which are included in Tier 1 capital is limited to 50 percent of Tier 1 capital, of which no more than 25 percent of Tier 1 capital can consist of purchased credit card relationships. Calculation of these limitations must be based on Tier 1 capital net of goodwill and other disallowed intangible assets.

(ii) Each intangible asset which is included in Tier 1 capital must be valued at the lesser of:

(A) 90 percent of the fair market value of the intangible asset, determined in accordance with section 2(c)(2)(iii) of this appendix A; or

(B) 100 percent of the remaining unamortized book value of the intangible asset, determined at least quarterly in accordance with the instructions of the Call Report.

(iii) Banks shall determine the current fair market value of each intangible asset included in Tier 1 capital at least quarterly. The quarterly determination of the current fair market value of the intangible asset must include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates. In determining the current fair market value of the intangible asset, the bank shall apply an appropriate market discount rate to the expected net cash flows of the intangible asset.

**PART 6—PROMPT CORRECTIVE ACTION**

1. The authority citation for part 6 continues to read as follows:

**Authority:** 12 U.S.C. 93a, 1831o.

2. In subpart A to part 6, paragraph (g) of § 6.2 is revised to read as follows:

**§ 6.2 Definitions.**

(g) *Tangible equity* means the amount of Tier 1 capital elements in the OCC's Risk-Based Capital Guidelines (appendix A to part 3 of this chapter) plus the amount of outstanding cumulative perpetual preferred stock (including related surplus) minus all intangible assets except mortgage servicing rights to the extent permitted in Tier 1 capital under section 2(c) in appendix A to part 3 of this chapter.

Dated: July 21, 1995.

**Eugene A. Ludwig,**  
*Comptroller of the Currency.*  
*Federal Reserve System*  
*12 CFR Chapter II*

For the reasons outlined in the joint preamble, the Board of Governors of the Federal Reserve System amends 12 CFR Chapter II as set forth below.

**PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)**

1. The authority citation for part 208 is revised to read as follows:

**Authority:** 12 U.S.C. 36, 248(a), 248(c), 321–338, 371d, 461, 481–486, 601, 611, 1814, 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351 and 3906–3909; 15 U.S.C. 78b, 781(b), 781(g), 781(i), 78o–4(c) (5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 208.31, paragraph (f) is revised to read as follows:

**§ 208.31 Definitions.**

(f) *Tangible equity* means the amount of core capital elements in the Board's Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure (Appendix A to this part), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except mortgage servicing rights to the extent that the Board determines that mortgage servicing rights may be included in calculating the bank's tier 1 capital.

3. Appendix A to part 208 is amended by revising section II.B.1.b. to read as follows:

**Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure**

- II. \* \* \*
- B. \* \* \*
- 1. \* \* \*

b. *Other intangible assets.* i. The only types of identifiable intangible assets that may be included in, that is, not deducted from, a bank's capital are readily marketable mortgage servicing rights and purchased credit card relationships, provided that, in the aggregate, the total amount of these assets included in capital does not exceed 50 percent of tier 1 capital. Purchased credit card relationships are subject to a separate sublimit of 25 percent of tier 1 capital.<sup>14</sup>

ii. For purposes of calculating these limitations on mortgage servicing rights and purchased credit card relationships, tier 1 capital is defined as the sum of core capital

<sup>14</sup> Amounts of mortgage servicing rights and purchased credit card relationships in excess of these limitations, as well as all other identifiable intangible assets, including core deposit intangibles and favorable leaseholds, are to be deducted from a bank's core capital elements in determining tier 1 capital. However, identifiable intangible assets (other than mortgage servicing rights and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes.

<sup>6</sup> [Reserved].

elements, net of goodwill and all identifiable intangible assets other than mortgage servicing rights and purchased credit card relationships, regardless of the date acquired. This method of calculation could result in mortgage servicing rights and purchased credit card relationships being included in capital in an amount greater than 50 percent—or in purchased credit card relationships being included in an amount greater than 25 percent—of the amount of tier 1 capital used to calculate an institution's capital ratios. In such instances, the Federal Reserve may determine that a bank is operating in an unsafe and unsound manner because of over-reliance on intangible assets in tier 1 capital.

iii. Banks must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair market value of mortgage servicing rights and purchased credit card relationships also must be determined at least quarterly. The fair market value generally shall be determined by applying an appropriate market discount rate to the expected future net cash flows. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates.

iv. Examiners will review both the book value and the fair market value assigned to these assets, together with supporting documentation, during the examination process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of a bank's intangible assets.

v. The amount of mortgage servicing rights and purchased credit card relationships that a bank may include in capital shall be the lesser of 90 percent of their fair market value, as determined in accordance with this section, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions in the commercial bank Consolidated Reports of Condition and Income (Call Reports). If both the application of the limits on mortgage servicing rights and purchased credit card relationships and the adjustment of the balance sheet amount for these intangibles would result in an amount being deducted from capital, the bank would deduct only the greater of the two amounts from its core capital elements in determining tier 1 capital.

vi. The treatment of identifiable intangible assets set forth in this section generally will be used in the calculation of a bank's capital ratios for supervisory and applications purposes. However, in making an overall assessment of a bank's capital adequacy for applications purposes, the Board may, if it deems appropriate, take into account the quality and composition of a bank's capital, together with the quality and value of its tangible and intangible assets.

vii. Consistent with long-standing Board policy, banks experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. \* \* \*

\* \* \* \* \*

4. Appendix A to part 208 is amended by revising section II.B.4. to read as follows:

\* \* \* \* \*

II. \* \* \*

B. \* \* \*

4. *Deferred tax assets.* The amount of deferred tax assets that are dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be included in, that is, not deducted from, a bank's capital may not exceed the lesser of: (i) the amount of these deferred tax assets that the bank is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,<sup>20</sup> or (ii) 10 percent of tier 1 capital. The reported amount of deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of the lesser of these two amounts is to be deducted from a bank's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than mortgage servicing rights and purchased credit card relationships, before any disallowed deferred tax assets are deducted. There generally is no limit in tier 1 capital on the amount of deferred tax assets that can be realized from taxes paid in prior carryback years or from future reversals of existing taxable temporary differences, but, for banks that have a parent, this may not exceed the amount the bank could reasonably expect its parent to refund.

\* \* \* \* \*

5. Appendix B to part 208 is amended by revising section II.b. to read as follows:

**Appendix B to Part 208—Capital Adequacy Guidelines for State Member Banks: Tier 1 Leverage Measure**

\* \* \* \* \*

II. \* \* \*

b. A bank's tier 1 leverage ratio is calculated by dividing its tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of tier 1 capital for year-end 1992 as set forth in the risk-

<sup>20</sup> To determine the amount of expected deferred tax assets realizable in the next 12 months, an institution should assume that all existing temporary differences fully reverse as of the report date. Projected future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences a bank expects to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize net operating losses or tax credit carryforwards that would otherwise expire during the year. Institutions do not have to prepare a new 12 month projection each quarter. Rather, on interim report dates, institutions may use the future taxable income projections for their current fiscal year, adjusted for any significant changes that have occurred or are expected to occur.

based capital guidelines contained in Appendix A of this part will be used.<sup>2</sup> As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the bank's Reports of Condition and Income (Call Reports), less goodwill; amounts of mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of tier 1 capital; all other intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of this Appendix A.<sup>3</sup>

\* \* \* \* \*

**PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)**

1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p-1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331-3351, 3907, and 3909.

2. Appendix A to part 225 is amended by revising section II.B.1.b. to read as follows:

**Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure**

\* \* \* \* \*

II. \* \* \*

B. \* \* \*

1. \* \* \*

b. *Other intangible assets.* i. The only types of identifiable intangible assets that may be included in, that is, not deducted from, a organization's capital are readily marketable mortgage servicing rights and purchased credit card relationships, provided that, in the aggregate, the total amount of these assets included in capital does not exceed 50 percent of tier 1 capital. Purchased credit card relationships are subject to a separate sublimit of 25 percent of tier 1 capital.<sup>15</sup>

<sup>2</sup> At the end of 1992, tier 1 capital for state member banks includes common equity, minority interest in the equity accounts of consolidated subsidiaries, and qualifying noncumulative perpetual preferred stock. In addition, as a general matter, tier 1 capital excludes goodwill; amounts of mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of tier 1 capital; all other intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

<sup>3</sup> Deductions from tier 1 capital and other adjustments are discussed more fully in section II.B. in Appendix A of this part.

<sup>15</sup> Amounts of mortgage servicing rights and purchased credit card relationships in excess of

ii. For purposes of calculating these limitations on mortgage servicing rights and purchased credit card relationships, tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than mortgage servicing rights and purchased credit card relationships, regardless of the date acquired. This method of calculation could result in mortgage servicing rights and purchased credit card relationships being included in capital in an amount greater than 50 percent—or in purchased credit card relationships being included in an amount greater than 25 percent—of the amount of tier 1 capital used to calculate an institution's capital ratios. In such instances, the Federal Reserve may determine that an organization is operating in an unsafe and unsound manner because of overreliance on intangible assets in tier 1 capital.

iii. Bank holding companies must review the book value of all intangible assets at least quarterly and make adjustments to these values as necessary. The fair market value of mortgage servicing rights and purchased credit card relationships also must be determined at least quarterly. The fair market value generally shall be determined by applying an appropriate market discount rate to the expected future net cash flows. This determination shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or account attrition rates.

iv. Examiners will review both the book value and the fair market value assigned to these assets, together with supporting documentation, during the inspection process. In addition, the Federal Reserve may require, on a case-by-case basis, an independent valuation of an organization's intangible assets.

v. The amount of mortgage servicing rights and purchased credit card relationships that a bank holding company may include in capital shall be the lesser of 90 percent of their fair market value, as determined in accordance with this section, or 100 percent of their book value, as adjusted for capital purposes in accordance with the instructions to the Consolidated Financial Statements for Bank Holding Companies (FR Y-9C Report). If both the application of the limits on mortgage servicing rights and purchased credit card relationships and the adjustment of the balance sheet amount for these intangibles would result in an amount being deducted from capital, the bank holding company would deduct only the greater of the two amounts from its core capital elements in determining tier 1 capital.

vi. The treatment of identifiable intangible assets set forth in this section generally will

these limitations, as well as all other identifiable intangible assets, including core deposit intangibles and favorable leaseholds, are to be deducted from an organization's core capital elements in determining tier 1 capital. However, identifiable intangible assets (other than mortgage servicing rights and purchased credit card relationships) acquired on or before February 19, 1992, generally will not be deducted from capital for supervisory purposes, although they will continue to be deducted for applications purposes.

be used in the calculation of a bank holding company's capital ratios for supervisory and applications purposes. However, in making an overall assessment of an organization's capital adequacy for applications purposes, the Board may, if it deems appropriate, take into account the quality and composition of an organization's capital, together with the quality and value of its tangible and intangible assets.

vii. Consistent with long-standing Board policy, banking organizations experiencing substantial growth, whether internally or by acquisition, are expected to maintain strong capital positions substantially above minimum supervisory levels, without significant reliance on intangible assets.

2. \* \* \*  
\* \* \* \* \*  
3. Appendix A to Part 225 is amended by revising section II.B.4. to read as follows:

\* \* \* \* \*

II. \* \* \*

B. \* \* \*

4. *Deferred tax assets.* The amount of deferred tax assets that are dependent upon future taxable income, net of the valuation allowance for deferred tax assets, that may be included in, that is, not deducted from, a banking organization's capital may not exceed the lesser of: (i) the amount of these deferred tax assets that the banking organization is expected to realize within one year of the calendar quarter-end date, based on its projections of future taxable income for that year,<sup>23</sup> or (ii) 10 percent of tier 1 capital. The reported amount of deferred tax assets, net of any valuation allowance for deferred tax assets, in excess of the lesser of these two amounts is to be deducted from a banking organization's core capital elements in determining tier 1 capital. For purposes of calculating the 10 percent limitation, tier 1 capital is defined as the sum of core capital elements, net of goodwill and all identifiable intangible assets other than mortgage servicing rights and purchased credit card relationships, before any disallowed deferred tax assets are deducted. There generally is no limit in tier 1 capital on the amount of deferred tax assets that can be realized from taxes paid in prior carryback years or from future reversals of existing taxable temporary differences.

\* \* \* \* \*

<sup>23</sup> To determine the amount of expected deferred tax assets realizable in the next 12 months, an institution should assume that all existing temporary differences fully reverse as of the report date. Projected future taxable income should not include net operating loss carryforwards to be used during that year or the amount of existing temporary differences a bank holding company expects to reverse within the year. Such projections should include the estimated effect of tax planning strategies that the organization expects to implement to realize net operating losses or tax credit carryforwards that would otherwise expire during the year. Institutions do not have to prepare a new 12 month projection each quarter. Rather, on interim report dates, institutions may use the future taxable income projections for their current fiscal year, adjusted for any significant changes that have occurred or are expected to occur.

4. Appendix D to part 225 is amended by revising section II.b. to read as follows:

**Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure**

\* \* \* \* \*

II. \* \* \*

b. A banking organization's tier 1 leverage ratio is calculated by dividing its tier 1 capital (the numerator of the ratio) by its average total consolidated assets (the denominator of the ratio). The ratio will also be calculated using period-end assets whenever necessary, on a case-by-case basis. For the purpose of this leverage ratio, the definition of tier 1 capital for year-end 1992 as set forth in the risk-based capital guidelines contained in Appendix A of this part will be used.<sup>3</sup> As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y-9C Report), less goodwill; amounts of mortgage servicing rights and purchased credit card relationships that, in the aggregate, are in excess of 50 percent of tier 1 capital; amounts of purchased credit card relationships in excess of 25 percent of tier 1 capital; all other intangible assets; any investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from tier 1 capital; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitation set forth in section II.B.4 of this Appendix A.<sup>4</sup>

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, July 26, 1995

**William W. Wiles,**  
*Secretary of the Board.*

*Federal Deposit Insurance Corporation  
12 CFR Chapter III*

For the reasons outlined in the joint preamble, the Board of Directors of the Federal Deposit Insurance Corporation amends 12 CFR chapter III as set forth below.

<sup>3</sup> At the end of 1992, tier 1 capital for banking organizations includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of tier 1 capital.) In addition, as a general matter, tier 1 capital excludes goodwill; amounts of mortgage servicing rights and purchased credit card relationships that, in the aggregate, exceed 50 percent of tier 1 capital; amounts of purchased credit card relationships that exceed 25 percent of tier 1 capital; all other intangible assets; and deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations. The Federal Reserve may exclude certain investments in subsidiaries or associated companies as appropriate.

<sup>4</sup> Deductions from tier 1 capital and other adjustments are discussed more fully in section II.B. in Appendix A of this part.

**PART 325—CAPITAL MAINTENANCE**

1. The authority citation for part 325 continues to read as follows:

**Authority:** 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909, 4808; Pub. L. 102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

2. In § 325.2, paragraph (n) is amended by removing the word “purchased” each place it appears and paragraph (s) is revised to read as follows:

**§ 325.2 Definitions.**

\* \* \* \* \*

(s) *Tangible equity* means the amount of core capital elements as defined in Section I.A.1. of the FDIC’s Statement of Policy on Risk-Based Capital (appendix A to this Part 325), plus the amount of outstanding cumulative perpetual preferred stock (including related surplus), minus all intangible assets except mortgage servicing rights to the extent that the FDIC determines pursuant to § 325.5(f) of this part that mortgage servicing rights may be included in calculating the bank’s Tier 1 capital.

\* \* \* \* \*

**§ 325.5 [Amended]**

3. Section 325.5 is amended by removing the words “purchased mortgage servicing rights” and adding, in their place, the words “mortgage servicing rights” in paragraphs (f), (g)(2)(i)(B), and (g)(5).

**Appendix A to Part 325 [Amended]**

4. In Appendix A to part 325, remove the words “purchased mortgage servicing rights” in footnote 2 to “Table I—Definition of Qualifying Capital” and add, in their place, the words “mortgage servicing rights”.

**Appendix B to Part 325 [Amended]**

5. In Appendix B to part 325, section IV.A.:

a. Remove the words “purchased mortgage servicing rights” and add, in their place, the words “mortgage servicing rights” each place they appear in footnote 1 and in the last sentence of the last paragraph; and

b. Remove the words “purchased servicing intangibles” and add, in their place, the words “servicing intangibles” in the last sentence of the last paragraph.

By order of the Board of Directors.

Dated at Washington, DC, this 21st day of July, 1995.

Federal Deposit Insurance Corporation.

**Jerry L. Langley,**  
*Executive Secretary.*

*Office of Thrift Supervision*

*12 CFR Chapter V*

For the reasons outlined in the joint preamble, the Office of Thrift Supervision hereby amends 12 CFR chapter V as set forth below.

**SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS**

**PART 565—PROMPT CORRECTIVE ACTION**

1. The authority citation for part 565 continues to read as follows:

**Authority:** 12 U.S.C. 1831o.

2. Section 565.2 is amended by revising paragraph (f) to read as follows:

**§ 565.2 Definitions**

\* \* \* \* \*

(f) *Tangible equity* means the amount of a savings association’s core capital as defined in part 567 of this subchapter plus the amount of its outstanding cumulative perpetual preferred stock (including related surplus), minus intangible assets as defined in § 567.1(m) of this subchapter and mortgage servicing rights not includable in core capital pursuant to § 567.12 of this subchapter.

\* \* \* \* \*

**PART 567—CAPITAL**

1. The authority citation for part 567 continues to read as follows:

**Authority:** 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.1 is amended by revising paragraph (m) to read as follows:

**§ 567.1 Definitions.**

\* \* \* \* \*

(m) *Intangible assets.* The term *intangible assets* means assets referred to as intangible assets in authoritative literature on generally accepted accounting principles. These intangible assets include, but are not limited to, goodwill, favorable leaseholds, core deposit premiums and purchased credit card relationships. Mortgage servicing rights (either originated or purchased) are not intangible assets under this definition.

\* \* \* \* \*

3. Section 567.5 is amended by revising paragraphs (a)(2) heading, (a)(2)(i) and (a)(2)(ii) to read as follows:

**§ 567.5 Components of capital.**

(a) \* \* \*

(2) *Deductions from core capital.* (i) Intangible assets, as defined in § 567.1(m) of this part, are deducted from assets and capital in computing core capital, except as otherwise provided by § 567.12 of this part.

(ii) Mortgage servicing rights (both originated and purchased) that are not includable in tangible and core capital pursuant to § 567.12 of this part are deducted from assets and capital in computing core capital.

\* \* \* \* \*

4. Section 567.6 is amended by revising paragraphs (a)(1)(iv)(L) and (a)(1)(iv)(M) to read as follows:

**§ 567.6 Risk-based capital credit risk-weight categories.**

(a) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(L) Mortgage servicing rights and intangible assets includable in core capital pursuant to § 567.12 of this part;

(M) Excess servicing receivables;

\* \* \* \* \*

5. Section 567.9 is amended by revising paragraph (c)(1) to read as follows:

**§ 567.9 Tangible capital requirement.**

\* \* \* \* \*

(c) \* \* \*

(1) Intangible assets, as defined in § 567.1(m) of this part, and mortgage servicing rights (purchased or originated) not includable in core and tangible capital pursuant to § 567.12 of this part.

\* \* \* \* \*

6. Section 567.12 is amended by revising the section heading and paragraphs (a) through (f) to read as follows:

**§ 567.12 Qualifying intangible assets and mortgage servicing rights.**

(a) *Scope.* This section prescribes the maximum amount of qualifying intangible assets, as defined in § 567.1(m) of this part, and mortgage servicing rights that savings associations may include in calculating tangible and core capital.

(b) *Definition.* *Qualifying intangible assets and mortgage servicing rights* means purchased credit card relationships and mortgage servicing rights (both originated and purchased). Mortgage servicing rights (both originated and purchased) may be included (that is, not deducted) in computing core and tangible capital. Purchased credit card relationships may be included in computing core capital, but must be deducted in computing tangible capital. These qualifying intangible assets and mortgage servicing

rights may be included in capital only in accordance with the limitations and restrictions set forth in this section. Intangible assets, as defined in § 567.1(m) of this part, other than purchased credit card relationships and core deposit intangibles grandfathered by paragraph (g)(3) of this section, must be deducted in computing tangible and core capital.

(c) *Market valuations.* The OTS reserves the authority to require any savings association to perform an independent market valuation of qualifying intangible assets and mortgage servicing rights on a case-by-case basis or through the issuance of policy guidance. An independent market valuation, if required, shall be conducted in accordance with any policy guidance issued by the OTS. A required valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or attrition rates. The valuation shall determine the current fair market value of the qualifying intangible assets and mortgage servicing rights by applying an appropriate market discount rate to the net cash flows expected to be generated from the qualifying intangible assets and mortgage servicing rights. This independent market valuation may be conducted by an independent valuation expert evaluating the reasonableness of the internal calculations and

assumptions used by the association in conducting its internal analysis. The association shall calculate an estimated fair market value for the qualifying intangible assets and mortgage servicing rights at least quarterly regardless of whether an independent valuation expert is required to perform an independent market valuation.

(d) *Value limitation.* For purposes of calculating core capital under this part (but not for financial statement purposes), qualifying intangible assets and mortgage servicing rights must be valued at the lesser of:

- (1) 90 percent of their fair market value determined in accordance with paragraph (c) of this section; or
- (2) 100 percent of their remaining unamortized book value determined in accordance with the instructions for the Thrift Financial Report.

(e) *Core capital limitation.*—(1) *Aggregate limit.* The maximum aggregate amount of qualifying intangible assets and mortgage servicing rights that may be included in core capital shall be limited to the *lesser* of:  
 (i) 50 percent of the amount of core capital computed before the deduction of any disallowed qualifying intangible assets or mortgage servicing rights; or  
 (ii) The amount of qualifying intangible assets and mortgage servicing rights determined in accordance with paragraph (d) of this section.

(2) *Reduction by deferred tax liability.* Associations may elect to reduce the amount of their disallowed (i.e., not

includable in capital) originated mortgage servicing rights exceeding the 50 percent aggregate limit by the amount of any associated deferred tax liability.

(3) *Sublimit for purchased credit card relationships.* In addition to the aggregate limitation on qualifying intangible assets and mortgage servicing rights set forth in paragraph (e)(1) of this section, a sublimit shall apply to purchased credit card relationships. The maximum allowable amount of purchased credit card relationships shall be limited to the lesser of:

- (i) 25 percent of the amount of core capital computed before the deduction of any disallowed qualifying intangible assets or mortgage servicing rights; or
- (ii) the amount of purchased credit card relationships determined in accordance with paragraph (d) of this section.

(f) *Tangible capital limitation.* The maximum amount of mortgage servicing rights that may be included in tangible capital shall be the same amount includable in core capital in accordance with the limitations set by paragraph (e)(1) of this section.

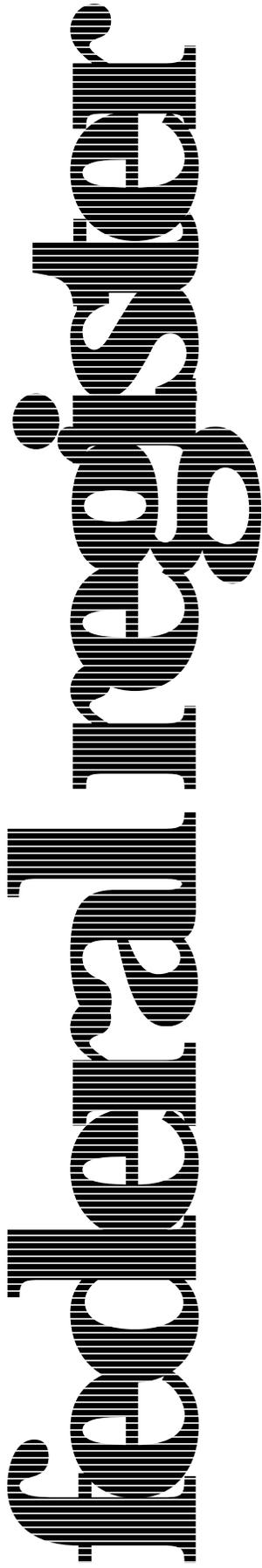
\* \* \* \* \*

Dated: July 25, 1995.

By the Office of Thrift Supervision.

**Jonathan L. Fiechter,**  
*Acting Director.*

[FR Doc. 95-18772 Filed 7-31-95; 8:45 am]  
 BILLING CODES 4810-33-P, 6210-01-P, 6714-01-P,  
 6720-01-P



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Tuesday  
August 1, 1995

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**Part V**

**Department of  
Housing and Urban  
Development**

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Office of the Secretary

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24 CFR Parts 25, 26, and 202  
Mortgagee Review Board; Proceedings  
Before a Hearing Officer; Approval of  
Lending Institutions and Mortgages;  
Technical Amendments; Final Rule

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Secretary**

**24 CFR Parts 25, 26, and 202**

[Docket No. FR-3065-F-04]

RIN 2501-AB24

**Mortgagee Review Board; Proceedings  
Before a Hearing Officer; Approval of  
Lending Institutions and Mortgagees;  
Technical Amendments**

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

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

**SUMMARY:** This rule changes the Department's regulations governing sanctions imposed by the Mortgagee Review Board. The rule also makes conforming changes to the regulations concerning HUD's hearing officers and approval of Title I lenders, consistent with the revisions herein and in the recent revisions to 24 CFR part 24. The changes to the Mortgagee Review Board actions are intended to follow more closely the statutory provisions set forth at 12 U.S.C. 1708(c). These revisions are necessary to comply with the President's directive to streamline agency operations throughout the executive branch. The revisions are also an element in the Government reinvention process at the Department.

**EFFECTIVE DATE:** August 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Emmett N. Roden, Assistant General Counsel for Administrative Proceedings, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10251, Washington, DC 20410, telephone (202) 708-2350. The telephone number for the hearing impaired (TDD) is (202) 708-9300. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Section 202(c) of the National Housing Act (12 U.S.C. 1708(c)) established the Mortgagee Review Board (the Board). Section 202(c)(4) directs the Board to "hold a hearing on the record" concerning certain sanctions it has taken against a mortgagee, if the mortgagee so requests within 30 days notice of the Board's action. However, the Department's regulations have delegated the Board's authority to hold hearings to hearing officers (administrative law judges and Board of Contract Appeals judges). These proceedings have proven extremely time-consuming and expensive. Accordingly, this rule provides for the Board to delegate its hearing authority

to a hearing official who will conduct informal hearings under stated time limitations, thereby streamlining the hearing process. The rule further provides that the hearing official may, at his or her discretion, refer matters to an administrative law judge or Board of Contract Appeals judge, or to another "independent" official for findings of fact. The term "independent" means that the other official will not be a member of the Board or employed within an office acting as an advisor to the Board as that term is described at § 25.4(b).

The rule also implements the 1992 amendments to section 202 (Pub. L. 102-550, approved October 28, 1992). These amendments limited the duration of a suspension issued by the Board to one year, unless extended for a period not longer than six months to protect the public interest, or unless extended with the mortgagee's agreement. The amendments also clarified that the term "mortgagee" includes a lender or loan correspondent approved under Title I of the National Housing Act.

In addition, the final rule reinstates a provision of 24 CFR 25.9 that the Department inadvertently deleted by a September 9, 1993 revision to the rule (58 FR 47379). This section (former § 25.9(x)) cited as grounds for an administrative action the failure by a mortgagee to remit, or timely remit, mortgage insurance premiums, loan insurance charges, late charges, or interest penalties to the Department. The final rule revises the current § 25.9(x) and moves the miscellaneous offense provision at § 25.9(w) to a more logical position at the end of § 25.9. The rule also restores provisions limiting discovery in § 25.8 that the Department inadvertently deleted in the proposed rule.

The rule also makes conforming changes to the Department's regulations at 24 CFR parts 26 and 202, governing hearing officers and Title I lenders, respectively, consistent with these revisions to the Board's regulations and revisions to 24 CFR part 24, published in the **Federal Register** June 26, 1995 (60 FR 33037, 33046).

**Discussion of Public Comment**

On December 20, 1994 (59 FR 65700) the Department published a proposed rule amending 24 CFR parts 25 and 26 of the Code of Federal Regulations. One comment was received, from the Administrative Conference of the United States (ACUS).

*Comment:* The commenter urged the Department to follow procedures similar to those proposed in Recommendation 95-2, "Debarment and Suspension from

Federal Programs," adopted by ACUS on January 18, 1995. ACUS Recommendation item II recommends that cases involving disputed issues of material fact be referred to administrative law judges, military judges, administrative judges of boards of contract appeals, or similarly independent hearing officers for hearings and preparation of (1) findings of fact, (2) a recommended decision, or (3) an initial decision, subject to agency appeal. Item II of the ACUS Recommendations also recommends that debarring officials be senior agency officials who are guaranteed sufficient independence to provide due process, and that such officials ensure that information used as the basis for a sanction appear in the administrative record of the decision.

*Response:* It should be noted that Board sanctions are substantially different from suspensions and debarments. Unlike those sanctions, which have Government-wide effect, the most severe Board sanction involves withdrawal of a mortgagee's license, previously granted by the Department, to participate in the insured mortgage programs of the Federal Housing Administration (FHA). Board sanctions are imposed only after the subject mortgagees have received advance notice of the allegations against them and an opportunity to respond to those allegations. A majority of the Board, composed of several of the Department's highest officials, must vote to impose a sanction. Considerable independence is thus statutorily guaranteed with respect to every Board action.

Furthermore, the governing statute provides, at section 202(c)(4)(B), that upon receipt of a request for a hearing "the Board shall hold a hearing on the record \* \* \*." Accordingly, a hearing official must be designated by the Board, and all hearings must be recorded.

However, in response to this comment and to reflect comparable revisions to the Department's final rule on suspensions and debarments, published in the **Federal Register** on June 26, 1995, this rule was revised to adopt procedures similar to the first suggested hearing method in ACUS Recommendation Item II. Thus, a hearing official designated by the Board shall conduct hearings on Board sanctions, and may, at his or her discretion, refer factual disputes to an administrative law judge, member of the Department's Board of Contract Appeals, or other independent official for findings of fact.

**Findings and Other Matters**

*National Environmental Policy Act*

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the Department's regulations, the policies and procedures contained in this rule relate only to administrative decisions, which do not constitute development decisions and do not affect the physical condition of a project area or building. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act.

*Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule implements statutory authority intended to protect the Department's programs from abusive practices, but it will have no adverse or disproportionate economic impact on small businesses.

*Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being. No significant change in existing policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns. Therefore, the rule is not subject to review under the Order.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the final rule is not subject to review under the Order.

*Semiannual Agenda*

This rule was listed as item 1379 in the Department's Semiannual Agenda published on May 8, 1995 (60 FR 23368, 23369) under Executive Order 12866 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 25*

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

*24 CFR Part 26*

Administrative practice and procedure.

*24 CFR Part 202*

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 25, 26, and 202 are amended as follows:

**PART 25—MORTGAGEE REVIEW BOARD**

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

**Authority:** 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715b and 1735(f)–14; 42 U.S.C. 3535(d).

2. Section 25.2 is revised to read as follows:

**§ 25.2 Establishment of Board.**

The Mortgagee Review Board (the Board) was established in the Federal Housing Administration, which is in the Office of the Assistant Secretary for Housing—Federal Housing Commissioner, by section 202(c)(1) of the National Housing Act (12 U.S.C. 1708(c)(1)), as added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989). Except as limited by this part, the Board shall exercise all of the functions of the Secretary with respect to administrative actions against mortgagees and lenders and such other functions as are provided in this part. The Board may, in its discretion, approve the initiation of a suspension or debarment action against a mortgagee or lender by any Suspending or Debarring Official under part 24 of this subtitle A. The Board shall have all powers necessary and incident to the performance of these functions. The Board may redelegate its authority to review submissions and conduct hearings under § 25.8. The Board may also redelegate its authority to impose administrative sanctions on the grounds specified in §§ 25.9 (e), (h), and (u), and to take all other nondiscretionary acts. With respect to actions taken against Title I lenders and loan correspondents, the Board may redelegate its authority to

take administrative actions for failure to remain in compliance with the requirements for approval in 24 CFR 202.3(j), 202.4(a), 202.5 (a) and (c), and 202.6 (a) and (e).

3. In § 25.3, definitions for “Hearing officer” and for “Hearing official” are added in alphabetical order, to read as follows:

**§ 25.3 Definitions.**

\* \* \* \* \*

*Hearing officer.* An Administrative Law Judge or Board of Contract Appeals judge authorized by the Secretary, or by the Secretary's designee, to issue findings of fact or other appropriate findings under § 25.8(d)(2).

*Hearing official.* An official designated by the Board to conduct hearings under § 25.8.

\* \* \* \* \*

4. Section 25.5 is amended by revising paragraphs (c)(1), (c)(2), and (d)(4)(iii), to read as follows:

**§ 25.5 Administrative actions.**

\* \* \* \* \*

(c) *Suspension*—(1) *General.* The Board may issue an order temporarily suspending a mortgagee's HUD/FHA approval if there exists adequate evidence of violation(s) under § 25.9 and continuation of the mortgagee's HUD/FHA approval, pending or at the completion of any audit, investigation, or other review, or such administrative or other legal proceedings as may ensue, would not be in the public interest or in the best interests of the Department. Suspension shall be based upon adequate evidence.

(2) *Duration.* A suspension shall last for a specified period of time, but not less than 6 months and generally not more than 1 year. The Board may extend the suspension for an additional 6 months if it determines that the extension is in the public interest. These time limits may also be extended upon the voluntary written agreement of the mortgagee.

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(iii) Upon receipt of the Board's decision under § 25.8(e).

\* \* \* \* \*

5. Section 25.7 is revised to read as follows:

**§ 25.7 Notice of administrative action.**

Whenever the Board takes an action to issue a letter of reprimand, to place a mortgagee on probation, or to suspend or withdraw a mortgagee's approval, the Board shall promptly notify the mortgagee in writing of the

determination. Except for a letter of reprimand, the notice shall describe the nature and duration of the administrative action, shall specifically state the violations, and shall set forth the findings of the Board. The notice shall inform the mortgagee of its right to a hearing, pursuant to § 25.8, regarding the administrative action (except for a letter of reprimand) and of the manner and time in which to request a hearing. A supplemental notice may be issued in the discretion of the Board to add or modify the reasons for the action.

6. Section 25.8 is revised to read as follows:

**§ 25.8 Hearings and hearing request.**

(a) *Hearing request.* A mortgagee that is issued a probation, suspension, or withdrawal action is entitled to a hearing on the record. The mortgagee shall submit its request for a hearing within 30 days of receiving the Board's notice of administrative action. The request shall be addressed to the Board Docket Clerk, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410. The request shall specifically respond to the violations set forth in the notice of administrative action. If the mortgagee fails to request a hearing within 30 days after receiving the notice of administrative action, the Board's action shall become final.

(b) *Procedural rules.* The hearing official shall hold a de novo hearing within 30 days of HUD's receipt of the mortgagee's request, unless the mortgagee requests a later hearing date. The mortgagee or its representative shall be afforded an opportunity to appear, submit documentary evidence, present witnesses, and confront any witness the agency presents. The parties shall not be allowed to present members of the Board as witnesses. At the mortgagee's request, a transcribed record of the hearing shall be made available at cost to the mortgagee.

(c) *Hearing location.* The hearing shall generally be held in Washington, D.C. However, upon a showing of undue hardship or other cause, the hearing official may, in his or her discretion, order the hearing to be held in a location other than Washington, D.C.

(d) *Hearing official's recommendation.* (1) The hearing official shall issue written findings and a recommended decision to the Board within 45 days after the conclusion of the hearing, unless the hearing official extends this period for good cause or refers a matter for findings of fact or other appropriate findings pursuant to paragraph (d)(2)(i) of this section. The findings and recommendation shall be

based upon the facts as found, together with any information and argument submitted by the parties and any other information in the administrative record.

(2) *Referral to a hearing officer or other independent official.* (i) The hearing official may, at his or her discretion, refer disputed material facts to a hearing officer or other independent official for findings of fact. The hearing official may also, at his or her discretion, refer other issues to a hearing officer or other independent official for appropriate findings. The hearing official shall provide the parties with notice of the referral. The hearing official may reject the findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(ii) The provisions of part 26 of this subtitle A shall be applicable to proceedings before a hearing officer, with the following limitations:

(A) No appeal to the Secretary may be taken under §§ 26.24 through 26.26 of this subtitle A with respect to any order or decision by the hearing officer.

(B) Discovery shall be limited to exclude requests for answers to interrogatories, requests for admissions, and production of documents that either do not pertain to the appealing mortgagee, or pertain to reviews or audits by the Department or administrative actions by the Board against mortgagees other than the appealing mortgagee. Members of the Board shall not be subject to deposition, nor shall they be required to testify at any hearing.

(iii) Proceedings before a hearing officer or other independent official shall commence within 45 days after referral by the hearing official, unless the parties agree to an extension of time. The hearing officer or other independent official shall issue the requested findings of fact or other appropriate findings to the hearing official within 30 days after the conclusion of such proceedings. The time limitations of this paragraph may be extended upon issuance of a written notice describing good cause for such extension.

(iv) The hearing official shall provide a recommended decision to the Board within 15 days after the findings are issued.

(v) [Reserved].

(e) *Decision by the Board.* The Board shall issue its decision within 15 days after the hearing official issues the recommended decision. The Board's decision shall be mailed to the mortgagee, and shall serve as the final agency action concerning the mortgagee.

7. Section 25.9 is amended by revising paragraphs (i), (w), (x), and (bb), and by adding paragraph (ee), to read as follows:

**§ 25.9 Grounds for an administrative action.**

\* \* \* \* \*

(i) Failure or refusal of an approved mortgagee to comply with an order of the Board, the Secretary, the hearing official, hearing officer or other independent official to whom matters are referred under § 25.8(d)(2).

\* \* \* \* \*

(w) Failure to remit, or timely remit, mortgage insurance premiums, loan insurance charges, late charges, or interest penalties to the Department;

(x) Failure to submit a report required under 24 CFR § 202.19 within the time determined by the Commissioner, or to commence or complete a plan for corrective action under that section within the time agreed upon by the Commissioner;

\* \* \* \* \*

(bb) Breach by the mortgagee of a fiduciary duty owed by it to any person as defined in § 25.3, including GNMA and the holder of any mortgage-backed security guaranteed by GNMA, with respect to an insured loan or mortgage transaction.

\* \* \* \* \*

(ee) Any other reason the Board or the Secretary determines to be so serious as to justify an administrative sanction.

**§ 25.12 [Amended]**

8. In § 25.12, paragraph (a) is amended by removing the words "Hearing Officer," from the fifth sentence, and by adding in their place the words "hearing official," and by removing the last sentence of the paragraph.

9. Section 25.16 is revised to read as follows:

**§ 25.16 Prohibition against modification of Board orders.**

No hearing official, hearing officer, or other independent official before whom proceedings are conducted under § 25.8 shall modify or otherwise disturb in any way an order or notice by the Board.

**§ 25.17 [Removed and reserved]**

10. Section 25.17 is removed and reserved.

**PART 26—PROCEEDINGS BEFORE A HEARING OFFICER**

11. The authority citation for part 26 is revised to read as follows:

**Authority:** 42 U.S.C. 3535(d).

12. Section 26.1 is amended by revising the second sentence to read as follows:

**§ 26.1 Purpose.**

\* \* \* These rules of procedure apply to hearings with respect to determinations by the Multifamily Participation Review Committee pursuant to 24 CFR part 200, subpart H, to hearings conducted pursuant to referrals by debarring or suspending officials under 24 CFR part 24, and to hearings conducted pursuant to referrals by a hearing official under 24 CFR part 25, unless such regulations at 24 CFR

parts 24, 25, or 200, provide otherwise.

\* \* \*

13. The authority citation for part 202 continues to read as follows:

**Authority:** 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

**PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES**

14. In § 202.9, paragraph (a) is revised, and paragraphs (c) and (d) are removed, to read as follows:

**§ 202.9 Administrative actions.**

(a) *General.* Administrative actions that may be taken against Title I lenders

are set forth in § 25.5 of this title. Civil money penalties may also be imposed against Title I lenders in accordance with § 25.13 of this title and 24 CFR part 30. For purposes of this section, the term “lender” shall also include a loan correspondent as defined in § 202.2(b).

\* \* \* \* \*

Dated: July 24, 1995.

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

[FR Doc. 95-18790 Filed 7-31-95; 8:45 am]

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Vol. 60, No. 147

Tuesday, August 1, 1995

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### CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

#### H.R. 1944/P.L. 104-19

Emergency Supplemental Appropriations for Additional Disaster Assistance, for Anti-terrorism Initiatives, for Assistance in the Recovery from the Tragedy that Occurred at Oklahoma City, and Rescissions Act, 1995 (July 27, 1995; 109 Stat. 194; 61 pages)

(The List of Public Laws that printed on July 28, 1995, is being corrected by replacing "1955" with "1995" in the title above.)

#### S. 523/P.L. 104-20

To amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner, and for other purposes. (July 28, 1995; 109 Stat. 255; 2 pages)

**Last List July 13, 1995**

TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 1995

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day. When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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August 2	August 17	September 1	September 18	October 2	October 31
August 3	August 18	September 5	September 18	October 2	November 1
August 4	August 21	September 5	September 18	October 3	November 2
August 7	August 22	September 6	September 21	October 6	November 6
August 8	August 23	September 7	September 22	October 10	November 6
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August 14	August 29	September 13	September 28	October 13	November 13
August 15	August 30	September 14	September 29	October 16	November 13
August 16	August 31	September 15	October 2	October 16	November 14
August 17	September 1	September 18	October 2	October 16	November 15
August 18	September 5	September 18	October 2	October 17	November 16
August 21	September 5	September 20	October 5	October 20	November 20
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August 29	September 13	September 28	October 13	October 30	November 27
August 30	September 14	September 29	October 16	October 30	November 28
August 31	September 15	October 2	October 16	October 30	November 29